

Docket No. TP-190976 - Vol. IV

WUTC v. Puget Sound Pilots

August 13, 2020



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1 BEFORE THE WASHINGTON
 2 UTILITIES AND TRANSPORTATION Commission
 3 WASHINGTON UTILITIES AND DOCKET TP-190976
 4 TRANSPORTATION COMMISSION,
 5 Complainant,
 6 v.
 7 PUGET SOUND PILOTS,
 8 Respondent.
 9 -----
 10 VIDEOCONFERENCE EVIDENTIARY HEARING BEFORE
 11 ADMINISTRATIVE LAW JUDGES
 12 RAYNE PEARSON AND MICHAEL HOWARD
 13 Volume IV
 14 Pages 357 - 666
 15 August 13, 2020
 16 9:01 a.m.
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 24
 25 REPORTED BY: CRYSTAL R. McAULIFFE, RPR, CCR, #2121

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1 A. It's -- can you give me a second to get to it,

2 please. I -- I need to go to the correct folder.

3 JUDGE PEARSON: So Ms. DeLappe, I have an

4 Excel spreadsheet. Which tab are we looking at?

5 MS. DeLAPPE: Thank you.

6 That is the "workload and recalls" tab. And

7 we're looking at Row 2. And specifically in Column Y,

8 as we discussed yesterday that 4.67 is equivalent of

9 4 hours and 40 minutes from when the job started and

10 when the job completed.

11 JUDGE PEARSON: Okay. Thank you for that

12 clarification.

13 THE WITNESS: I'm there.

14 MS. DeLAPPE: Thank you.

15 BY MS. DeLAPPE:

16 **Q. And so, Captain Carlson, if you can just confirm**

17 **what I just said, Column Y is the job duration of four**

18 **hours and 40 minutes.**

19 A. 4.67 is four hours and 40 minutes.

20 **Q. Thank you.**

21 **And then in Column AC, where it says "Duty dur,"**

22 **that's duty duration; is that right?**

23 A. I -- I believe so, but I didn't create this

24 spreadsheet.

25 **Q. Okay. Well, we'll get to those questions in a**

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1 VIDEOCONFERENCE UTC EVIDENTIARY HEARING

2 AUGUST 13, 2020

3 9:01 a.m.

4 -o0o-

5

6 JUDGE PEARSON: Good morning. Let's be back

7 on the record for the second day of the evidentiary

8 hearing in Docket 910976.

9 We will begin where we left off yesterday,

10 which is PMSA's cross-examination of Captain Carlson,

11 and I will just remind you that you are still under

12 oath.

13 And, Ms. DeLappe, you can begin whenever

14 you're ready.

15 MS. DeLAPPE: Thank you very much. Am I

16 audible?

17 JUDGE PEARSON: Yes.

18 CROSS-EXAMINATION (Resumed)

19 BY MS. DeLAPPE:

20 **Q. Captain Carlson, going back to Exhibit IC-39X,**

21 **now that you've had a chance to review the rest of row**

22 **two on that exhibit.**

23 **Can you please just confirm for us that the**

24 **actual job duration as shown in Column Y was 4 hours and**

25 **40 minutes in length for is that job?**

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1 **moment. So a qualified "yes" on that.**

2 **And you're understanding would be that that**

3 **means where it says "9.08," 9 hours and five minutes for**

4 **the duty duration?**

5 A. 9.08 sounds about like 9 hours and 5 minutes.

6 **Q. Thank you.**

7 **So if the job duration was 4 hours and**

8 **40 minutes, but here the pilot is claiming credit for an**

9 **assignment with a total duration of 9 hours and 5**

10 **minutes?**

11 MR. FASSBURG: Objection. That

12 mischaracterizes what this data represents.

13 MS. DeLAPPE: That's exactly what my

14 question is.

15 JUDGE PEARSON: Is you're asking what the

16 data represents?

17 MS. DeLAPPE: Correct.

18 JUDGE PEARSON: Okay. I'll allow that

19 question.

20 THE WITNESS: I can't speak to what the data

21 represents.

22 BY MS. DeLAPPE:

23 **Q. Okay. So just going back to the purpose of a**

24 **pilot check-in, which the check-in time in this data is**

25 **in Column AA.**

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1 **Is the purpose of a check-in so dispatchers know**
 2 **that the pilot is available?**
 3 A. It is.
 4 **Q. Thank you.**
 5 **And is all the original data that underlies this**
 6 **spreadsheet that was provided by PSP to Dr. Khawaja, was**
 7 **all of that recorded and produced from the COE Dispatch**
 8 **System software?**
 9 A. I'm not sure that PSP provided this information
 10 to Dr. Khawaja.
 11 **Q. If you could turn --**
 12 A. I'm not sure about this information.
 13 **Q. All right. Thank you.**
 14 **So yesterday we talked about where this data**
 15 **came from. And it is Dr. Khawaja responded to PMSA's**
 16 **Data Request 220 when we asked for the data set**
 17 **underlying his callback model. He -- he produced this**
 18 **spreadsheet. And that is in IC-42X, page 24.**
 19 **Do you see the response to Data Request No. 220**
 20 **in your cross-exam exhibit there, Captain Carlson?**
 21 A. I have IC-42X as Data Request No. 188 to Walt
 22 Tabler. 24?
 23 MR. FASSBURG: Go to page 24 that's on the
 24 top, the header.
 25 BY MS. DeLAPPE:

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1 **Q. Thank you.**
 2 **There are multiple page numbers on there because**
 3 **they were data requests with --**
 4 A. Okay.
 5 **Q. So Data Request No. 220 to Dr. Khawaja was**
 6 **asking him to provide a copy of the data set claimed by**
 7 **NASA which was the primary basis of the analysis, and**
 8 **I'll represent to you that that analysis was regarding**
 9 **the callback model. And this is the data that he**
 10 **provided with the PSP Bates number. And he said to see**
 11 **at the tab "workload and recalls."**
 12 A. Yes. I don't see where he said we provided it.
 13 But, yes.
 14 **Q. That was actually in his testimony yesterday.**
 15 **So that's fine, it's on the record.**
 16 **Your software, the PSP software, the COE**
 17 **Dispatch System software, so you're saying today that**
 18 **you're not aware of whether that system software created**
 19 **the original data for this spreadsheet?**
 20 A. It may -- I believe the original non-manipulated
 21 data was created by the dispatch software for the period
 22 of 2017 and 2018.
 23 **Q. Thank you.**
 24 **And when you say "non-manipulated data," you're**
 25 **talking about NASA's manipulation of the data as**

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1 **consultants for PSP?**
 2 A. I'm not sure who I'm talking about, because I
 3 don't know whether it was NASA or Dr. Khawaja that did
 4 the work here in this data set.
 5 **Q. Okay. So the last -- my last question is, is it**
 6 **correct that you have dispatch system data from 2016 to**
 7 **present?**
 8 A. Yes.
 9 MS. DeLAPPE: Thank you. No further
 10 questions.
 11 JUDGE PEARSON: Thank you.
 12 And, Mr. Fassburg, would you like to
 13 redirect?
 14 MR. FASSBURG: I would.
 15 REDIRECT EXAMINATION
 16 BY MR. FASSBURG:
 17 **Q. Captain Carlson, yesterday you were asked**
 18 **questions about Exhibit IC-42X and specifically Data**
 19 **Request 28. Can you -- I think you have 42X open. See**
 20 **if I can find the page of the Data Request No. 28. It**
 21 **starts on page 3.**
 22 A. Okay.
 23 **Q. If you will please go to Example 3 which is on**
 24 **page 6.**
 25 A. Okay.

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1 **Q. Now, going back to the table for what happened**
 2 **on August 6th, it shows that there were 13 vessel**
 3 **assignments. Would that be considered a day that would**
 4 **have a low number of vessel assignments within a year?**
 5 A. Yes.
 6 **Q. Would PSP prefer pilots take callback dates on a**
 7 **day with a low number of vessel assignments or on a day**
 8 **with a high number of vessel assignments?**
 9 A. It works out best if it's a low number of days.
 10 **Q. Why would that be?**
 11 A. A low number of assignments. It would have less
 12 impact on the dispatch system as a whole.
 13 **Q. Is that because when a pilot takes the day off**
 14 **on a day with a low number of vessel assignments, it's a**
 15 **day they might not have had a vessel assignment anyway?**
 16 A. Yes.
 17 **Q. Now, you were asked about whether taking**
 18 **callback days will create callback days. But when that**
 19 **day finished, did PSP have more callback days in its**
 20 **accumulated liability or did it have less?**
 21 A. Well, it would have had less.
 22 **Q. Is that because six pilots took callbacks but**
 23 **only two earned them?**
 24 A. Yes.
 25 **Q. Now, at the time of August 6, 2018, did PSP have**

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1 a cabin place on the number of callbacks each pilot
 2 could bank within a certain time period?
 3 A. Yes.
 4 **Q. What -- why did PSP implement that tap on the**
 5 **number of callback days that could be banked?**
 6 A. We were trying to eliminate the -- the overall
 7 bank of callback dates outstanding.
 8 **Q. What was the effect of putting a cap on the**
 9 **number of callback days a pilot could bank?**
 10 A. Well, it started reducing the number in the
 11 bank. But it also -- what was happening is we were
 12 getting all these callback days that had a one-year
 13 expiration day, and then -- and then in this particular
 14 period, a lot of them came due or they were set to
 15 expire during the summer which is why we wanted to
 16 eliminate the cap.
 17 **Q. So just to be clear, if pilots had to use or**
 18 **lose their callback days under this cap, that they were**
 19 **being forced to use them or else --**
 20 MS. BROWN: This is Sally Brown for
 21 Commission Staff. I have an objection, Your Honor.
 22 Mr. Fassburg is testifying. This is
 23 redirect.
 24 JUDGE PEARSON: I agree. Mr. Fassburg, you
 25 need to keep your editorializing to a minimum and just

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1 ask questions.
 2 MR. FASSBURG: I'd be happy to. I'm just
 3 trying to get through this quickly, because based on the
 4 number of questions Captain Carlson received, we have a
 5 lot of redirect, and there's quite a few more witnesses
 6 to go today.
 7 JUDGE PEARSON: I understand. But you can
 8 do that by pointing him to testimony or back to
 9 questions that were asked rather than adding new
 10 information.
 11 MR. FASSBURG: I would be happen to.
 12 BY MR. FASSBURG:
 13 **Q. Captain Carlson, would those pilots have lost**
 14 **the benefit of their callback days had they not used**
 15 **them before they expired?**
 16 A. Yes.
 17 **Q. What did PSP do after August 6, 2018, to ensure**
 18 **pilots did not feel compelled to use them or lose them?**
 19 A. We had passed an all-membership ballot to the
 20 operating rules that removed the cap on callback days.
 21 **Q. What was the effect on the accumulated liability**
 22 **for callbacks that resulted from removing the cap?**
 23 A. A ballooning of the accumulated callback days.
 24 **Q. Does PSP consider rules like caps on callbacks,**
 25 **like you just described, or other measures in order to**

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1 manage how callbacks are used and when they are used?
 2 A. Well, we're -- it's something that we're
 3 constantly looking at. We -- every year we take a look
 4 at: What can we do to reduce the callbacks? What can
 5 we do to -- what caused the callback day? Was it a
 6 three and out? Was it a pilot in a meeting? Was it
 7 just too many vessels for the number of available
 8 pilots? Was it a pilot taking a comp day? It's really
 9 hard to tell.
 10 **Q. Based on that analysis that PSP performs, does**
 11 **it consider changes to the systems that it uses in order**
 12 **to better manage pilot availability?**
 13 A. Yes.
 14 **Q. And I don't think I asked you this.**
 15 **Do you know whether any of the callback days**
 16 **that were taken on August 6th were taken to avoid**
 17 **fatigue?**
 18 A. I do not.
 19 **Q. Is that a common practice for pilots?**
 20 A. Yes.
 21 **Q. Now, I think we heard yesterday about the policy**
 22 **that was put in place where pilots could take -- or they**
 23 **could refuse an assignment if they were fatigued.**
 24 **Back on August 6, 2018, if a pilot refused an**
 25 **assignment due to fatigue, was there a reporting**

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1 requirement that they had to comply with to report their
 2 refusal to the Board of Pilotage Commissioners?
 3 A. Yes.
 4 **Q. And if the Board of Pilotage Commissioners found**
 5 **that their explanation was without merit for reasonable**
 6 **cause did not exist, could that pilot be subject to**
 7 **discipline by the Board?**
 8 A. Yes.
 9 **Q. Did -- subsequent to August 6, 2018, did the**
 10 **Board pass policy that made it clear pilots could refuse**
 11 **assignments without that risk?**
 12 A. Yes.
 13 **Q. In your knowledge, do pilots continue to use**
 14 **callback days if they feel fatigued regardless of**
 15 **whether or not that policy exists?**
 16 A. Certainly.
 17 **Q. You were also asked yesterday about whether a**
 18 **meeting would be considered an assignment for the**
 19 **purpose of the strict rotation system. I have some**
 20 **follow-up questions on that.**
 21 **If a pilot were not removed from the board for a**
 22 **meeting, and then were assigned to a vessel move**
 23 **following a meeting, would that risk pilot fatigue?**
 24 A. Yes.
 25 **Q. I'll ask you an example. Captain Anthony is one**

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1 of the Pilot Commissioner for the Board of Pilotage
 2 Commissioners. If Captain Anthony were to attend a BPC
 3 meeting at the BPC at 0900 in Seattle and traveled from
 4 his home outside of King County to that meeting and then
 5 were immediately assigned to a repo out to the pilot
 6 station to inbound assignment to Tacoma, how many
 7 continuous hours might Captain Anthony work?
 8 A. 0900 to an -- to a repo. So 13, 21, six and
 9 eight. That would take him to -- 21 to 8 is -- so from
 10 nine o'clock to five in the morning. Nine o'clock in
 11 the morning to five in the morning is what it would be.
 12 Q. In order to avoid situations like that from
 13 happening, how do PSP's dispatchers manage pilot
 14 assignments around meetings?
 15 A. They generally provide rest before the meeting
 16 and they generally provide rest after the meeting.
 17 Q. And just one more quick example. If -- if
 18 Captain Anthony were to complete -- 0400 and --
 19 JUDGE PEARSON: Mr. Fassburg --
 20 MR. FASSBURG: I'm sorry?
 21 JUDGE PEARSON: You cut out.
 22 MR. FASSBURG: Thank you.
 23 JUDGE PEARSON: Can you start that question
 24 over?
 25 MR. FASSBURG: I will. Thank you.

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1 BY MR. FASSBURG:
 2 Q. If Captain Anthony completed an assignment at
 3 0400 and then went to Seattle for an 0900 BPC meeting,
 4 could he comply with mandatory rest rules?
 5 A. No.
 6 Q. You were asked some questions yesterday about
 7 compensation for comp days or callback days. And I want
 8 to talk to you about the distribution formula in the
 9 bylaws to which some of this discussion related.
 10 If, hypothetically, instead of using the
 11 distribution formula PSP does use, if instead every
 12 pilot were compensated for the assignments they worked
 13 based upon the revenue that was generated, but every
 14 pilot worked the exact same number of assignments, would
 15 all pilots be compensated the same amount of money?
 16 A. Can you repeat the question, please?
 17 Q. Yeah. It's a hypothetical. So if instead of a
 18 uniform distribution based on an equal share of pooled
 19 revenue, pilots instead just got paid for the jobs they
 20 worked. There was a strict rotation system and each
 21 pilot got paid the ship's tariff amount for the job they
 22 worked, would each pilot be paid the same amount of
 23 money?
 24 A. No.
 25 Q. Why is that?

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1 A. Some ships pay more; some pay ships less. And
 2 if you're only compensated -- if you're compensated for
 3 the work you do, you are for's the vessels that you move
 4 based on their revenue that's generated, you could make
 5 quite a bit more or you could quite a bit less.
 6 Q. Would pilot compensation --
 7 JUDGE PEARSON: Mr. Fassburg, you cut out
 8 again on that question. We didn't hear it.
 9 MR. FASSBURG: I'm sorry about that.
 10 BY MR. FASSBURG:
 11 Q. Would compensation in that system be based on
 12 luck of the draw?
 13 A. Yes.
 14 Q. Is one of the reasons PSP uses a uniform
 15 distribution to ensure fair compensation based upon an
 16 equal amount of work as opposed to which assignment you
 17 get specifically?
 18 A. Yes.
 19 Q. So under that system, that you do have, if a
 20 pilot could not be compensated for doing administrative
 21 work by getting a duty day within the bylaws definition
 22 for doing administrative work, would there be any
 23 incentive for pilots to do anything other than move
 24 ships?
 25 A. No.

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1 Q. Could PSP function as an organization if pilots
 2 were not willing to perform administrative work?
 3 A. No.
 4 Q. Could ships be moved safely if pilots did not
 5 perform administrative work?
 6 A. No.
 7 Q. Could the BPC train trainees, if pilots did not
 8 do work for the BPC?
 9 A. No.
 10 Q. Now, there's also been a little bit of talk
 11 about how pilots get compensated for callback days. And
 12 I want to ask you about that in a different context.
 13 If a pilot only receives additional distribution
 14 of pooled revenue compared to other pilots, but the
 15 revenue required doesn't actually have an increase based
 16 on the fact callbacks were being worked, who's paying
 17 that pilot for callback?
 18 A. It would come from the revenue that's a general
 19 revenue.
 20 Q. So would it be PSP as opposed to the vessel?
 21 A. Yes, it would come from PSP.
 22 Q. I'll give you another hypothetical. If every
 23 pilot worked the exact same number of callbacks and
 24 there were no additional revenue in the revenue
 25 requirement to fund callbacks, does any pilot earn more

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1 **than they would have if there were no callbacks at all?**

2 A. No.

3 **Q. Why is that?**

4 A. If -- if all pilots worked the same number of

5 callbacks, the same revenue is generated, and it's

6 distributed equally so the pilot would have worked --

7 say they all worked 10 callbacks, they would -- or 20

8 callbacks, they all -- same amount of revenue is

9 generated, but no additional revenue to compensate them;

10 and if they all worked the same amount, they would make

11 the same as if they just delayed the vessels.

12 **Q. Finally, I think there was a question yesterday**

13 **about how pilots spend their time on days when they**

14 **don't have an assignment or during prolonged periods**

15 **when they don't have an assignment, and I want to**

16 **revisit that.**

17 **Captain Carlson, do pilots work at the same time**

18 **of day or night each day?**

19 A. No.

20 **Q. Can you describe for the Commission the type of**

21 **variability of day or night work scheduling pilots have?**

22 A. Well, there's 24 hours on the clock and you

23 could start in any one of them and finish in any one of

24 them, and you're expected to manage your fatigue so that

25 you're ready to start at the next one.

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1 **Q. Well, if a pilot had a job that ends at 0400,**

2 **like we talked about earlier, are they going to have**

3 **another job that lines up with their sleep cycle?**

4 A. No.

5 **Q. What does a pilot do during their off-time to**

6 **ensure they're rested if their next job doesn't line up**

7 **with their sleep cycle?**

8 A. Pilots try to rest the best they can. That --

9 different pilots manage their fatigue different ways,

10 there's a lot of little tricks that we all have, but

11 it's difficult.

12 **Q. At the pilot station, when pilots are there for**

13 **a prolong period of time, can you describe how pilots**

14 **get their rest for their next assignments and how**

15 **assignment variability can affect their sleep?**

16 A. Yes. Well, so if -- if a pilot, say, arrives at

17 the pilot station at 0600, six o'clock in the morning.

18 They are required 10 hours rest. And that means they

19 can go to work on another vessel at 1600, four o'clock

20 in the afternoon. But it appears as though there's not

21 going to be another job until midnight. So that

22 pilot -- it's pilot specific. Everybody manages their

23 fatigue differently. Some pilots go right to bed and

24 they can sleep, maybe, four, five hours and they count

25 on naps. Other pilots may try to run that clock out a

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1 little bit so they are going to bed a little bit later

2 so that they are rested for the midnight job.

3 But sometimes what happens is the order time

4 changes, things happen and maybe a reposition from

5 Port Angeles to Seattle that wasn't on the screen when

6 that pilot had his strategy laid out, pops up because of

7 a -- a job on the Seattle side. So they reposition

8 someone in and now the pilot who thought he was managing

9 his fatigue for a midnight job, now failed to manage his

10 fatigue for a four o'clock job. And he'll still get

11 respite, but -- but not as much.

12 **Q. Are these sort of changes, moving targets,**

13 **assignment times a problem for pilots attempting to plan**

14 **the rest?**

15 A. All the time.

16 MR. FASSBURG: I think I have no more

17 questions.

18 JUDGE PEARSON: All right. Thank you.

19 We do need to take a recess now to conduct

20 the open meeting.

21 Commissioners, do you want to come back at

22 9:35 or 9:40?

23 COMMISSIONER RENDAHL: I'd prefer 9:40.

24 JUDGE PEARSON: Sounds good.

25 CHAIR DANNER: 9:40. Depending on the

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1 meeting, we might be a little late for this.

2 JUDGE PEARSON: All right. We are in recess

3 then until 9:40. Thank you.

4 (A break was taken from 9:28 a.m. to 9:44 a.m.)

5 JUDGE PEARSON: Let's be back on the record

6 following a brief recess.

7 Does staff have cross for Captain Carlson?

8 MR. FUKANO: Yes, it does.

9 JUDGE PEARSON: All right. You may proceed

10 when you are ready.

11 MR. FUKANO: Thank you, Your Honor.

12 BY MR. FUKANO:

13 **Q. Hello, Captain Carlson, how are you this day?**

14 A. Good. Thank you. Good morning.

15 **Q. Are you familiar with the legislative tariff**

16 **freeze of the Puget Sound Pilotage District tariff?**

17 A. The tariff freeze? Yes, I am.

18 **Q. And is it correct that the tariff freeze**

19 **occurred in 2017; is that true?**

20 THE WITNESS: Excuse me, just a minute. Can

21 we get the volume turned up a little bit?

22 MR. FASSBURG: Did you hear his question?

23 THE WITNESS: No, I did not.

24 BY MR. FUKANO:

25 **Q. Is it true that the tariff freeze occurred in**

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1 **2017?**
 2 A. Yes.
 3 **Q. In -- in your opinion, why was the tariff**
 4 **frozen?**
 5 MR. FASSBURG: Objection. Calls for him to
 6 interpret the legislature's intent.
 7 JUDGE PEARSON: Overruled. It's asking for
 8 his opinion.
 9 THE WITNESS: I don't have a -- an opinion
 10 on that.
 11 BY MR. FUKANO:
 12 **Q. In that you don't know?**
 13 A. I'm not sure exactly what took place behind
 14 closed doors at the legislature and what their --
 15 what -- what was being considered by them when they
 16 froze the tariff.
 17 **Q. All right. And in your role as vice president**
 18 **of PSP, you are familiar with the membership of PSP; is**
 19 **that correct?**
 20 A. Yes.
 21 **Q. Do you have a sense of -- if there have been**
 22 **pilots, PSP members, who have given up their license to**
 23 **work in other pilotage districts?**
 24 A. No. I do have a sense.
 25 **Q. And so could you clarify your response as "no"?**

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1 A. I have a sense of any pilots that gave up their
 2 license to work anywhere else.
 3 **Q. Did any?**
 4 A. No.
 5 **Q. Does PSP track the anticipated retirements of**
 6 **PSP members, whether voluntarily or due to age**
 7 **requirements?**
 8 A. To the best of our ability, we -- we track them.
 9 People, you know, oftentimes change their plans, but
 10 generally, we -- we track them.
 11 **Q. And are -- are you familiar with those figures,**
 12 **the tracking time?**
 13 A. What's the time period?
 14 **Q. In the -- presently.**
 15 A. Am I familiar -- can you restate the question,
 16 please?
 17 **Q. Certainly.**
 18 **Are you familiar with the anticipated retirement**
 19 **dates or instances in the future of PSP members?**
 20 A. I'm familiar with those that are turning 70.
 21 There are a couple of others that its unknown on when
 22 they are going to retire.
 23 **Q. How many retirements would you anticipate will**
 24 **occur by the suspension date of this proposed tariff**
 25 **proposed, December r, 2020? Just offhand.**

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1 A. How many retirements by September 4, 2020?
 2 **Q. December 4, 2020.**
 3 A. I don't know if any additional pilots will
 4 actually be retired by December 4, 2020.
 5 **Q. And so subject to check, you would say that**
 6 **there will be no new retirements prior to December 4,**
 7 **2020?**
 8 A. Yes. But again, I'm not certain on that.
 9 **Q. Certainly. Subject to check.**
 10 **And you're familiar with the Board of Pilotage**
 11 **Commission rate-setting process in your role as vice**
 12 **president?**
 13 A. Yes.
 14 **Q. Based on your familiarity and experience, when**
 15 **was the last -- isn't it true that the BPC has not**
 16 **expressly relied on comparable pilotage districts'**
 17 **incomes to set rates for the Puget Sound Pilotage**
 18 **District?**
 19 A. In my opinion, it's a black box. There's no
 20 clear definition on -- no clear description of what they
 21 did consider or what they didn't consider.
 22 **Q. And so would that be a no?**
 23 A. There's no clear description of what they did or
 24 didn't do.
 25 **Q. Thank you.**

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1 **You're familiar with the concept of the target**
 2 **assignment level; correct?**
 3 A. Yes.
 4 **Q. Are the terms "safe assignment level" and**
 5 **"target assignment level" roughly synonymous?**
 6 A. Yes. Yeah, they changed it because of legal
 7 concerns; but yes.
 8 **Q. And isn't it true that the current target**
 9 **assignment level set by the Board of Pilotage Commission**
 10 **is 145?**
 11 A. I don't think they actually -- I think as I read
 12 the minutes of the meeting and I was there at the
 13 meeting, I -- I don't think they decided on adjusting
 14 the target assignment level or even stating a target
 15 assignment level.
 16 **Q. And would you refer to -- pardon me one**
 17 **moment -- to Exhibit IC-35.**
 18 A. Yes.
 19 **Q. And, specifically, DR response No. 93, and that**
 20 **should be page 9 of that document.**
 21 A. Okay.
 22 **Q. And this document, in response to the question:**
 23 **What is the current BPC-approved target assignment**
 24 **level? You responded, "The current target assignment**
 25 **level presumably remained at 145"; is that correct?**

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1 A. I think the key word is "presumably." Yes, that
 2 is correct. That is my response.
 3 **Q. And you would agree that the PSP has previously**
 4 **asked the Board of Pilotage Commissioners to set the**
 5 **target assignment level at 118 assignments; correct?**
 6 A. During that same meeting we did, yes.
 7 **Q. And you would also agree that the BPC did not**
 8 **change the target assignment level to 118?**
 9 A. I would agree to that.
 10 **Q. And would you please refer to testimony IC-1T at**
 11 **page 18.**
 12 A. Okay.
 13 **Q. Apologies. I'm a bit slower.**
 14 **And on lines 18 to 19, you made a recommendation**
 15 **of a DNI of \$500,000 for a full-time equivalent;**
 16 **correct?**
 17 A. Yes.
 18 **Q. Do you recall how you arrived at that number?**
 19 A. I think what we were trying to do when we set
 20 that at 500 was to be reasonable. To not shoot for
 21 that -- the extreme high end, but not shoot for the low
 22 end. I think we were just trying to be responsible when
 23 we shopped for 500.
 24 MR. FUKANO: Thank you.
 25 No further questions at this time.

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1 MR. FASSBURG: I have no redirect. Thank
 2 you.
 3 JUDGE PEARSON: All right. Do we have any
 4 questions from the bench for Captain Carlson?
 5 Commissioner Rendahl.
 6 EXAMINATION
 7 BY COMMISSIONER RENDAHL:
 8 **Q. Good morning, Captain Carlson, how are you?**
 9 A. I'm surviving.
 10 **Q. You're back.**
 11 **So I have a question related to the questions**
 12 **Staff counsel asked you about the number of retirements**
 13 **anticipated. PSP -- sorry.**
 14 **Can you hear me better now?**
 15 A. I hear, yes.
 16 **Q. Okay. So PSP has proposed a three-year rate**
 17 **plan; correct?**
 18 A. Yes.
 19 **Q. So you identified in your response to Staff**
 20 **counsel that you didn't anticipate any retirements by**
 21 **the end of 2020; correct?**
 22 A. No, I didn't. I said by December 4th. At the
 23 end -- at the end of 2020, I think December 30th, one
 24 guy is planning on retiring. He will have burned all of
 25 his days and he will be retired. And then we do

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1 anticipate that some of the other pilots will have
 2 burned all their days and retire in 2021.
 3 **Q. And how many in 2021, do you think? Are you**
 4 **anticipating.**
 5 A. I think we'll have three in the end -- in 2021.
 6 **Q. All right. And then for 20 -- go ahead.**
 7 A. I'm sorry. I think so. I need to check.
 8 **Q. Right. Subject to check.**
 9 **And then at the end of 2022, how many do you**
 10 **think -- do you anticipate are retiring at the end of**
 11 **the third year of the rate period?**
 12 A. I have to check. I'm -- I'm not sure. Again,
 13 pilots are required to give a six months' notice prior
 14 to retirement. And some of those are -- they -- they
 15 alter their times all the time based on stock market,
 16 different things.
 17 COMMISSIONER RENDAHL: So I guess I would
 18 ask a bench request, Judge Pearson, for the anticipated
 19 retirements based on age, because we don't know about
 20 all the other factors. But just based on age, PSP
 21 should let us know how many are anticipated to retire at
 22 the end of each of the rate years for the three-year
 23 rate period they are proposing.
 24 Is that clear, Mr. Fassburg?
 25 MR. FASSBURG: Yes, it is. Thank you.

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1 COMMISSIONER RENDAHL: Thank you.
 2 That's all I have.
 3 JUDGE PEARSON: Okay. Any questions from --
 4 Commissioner Balasbas.
 5 COMMISSIONER BALASBAS: Thank you.
 6 EXAMINATION
 7 BY COMMISSIONER BALASBAS:
 8 **Q. Good morning, Captain Carlson.**
 9 A. Good morning.
 10 **Q. Just to clarify, for the record, when a pilot --**
 11 **when a pilot is compensated for a callback day, they**
 12 **receive two days off for every one day that they work on**
 13 **a callback?**
 14 A. Yes.
 15 **Q. All right. Thank you.**
 16 A. Excuse me --
 17 **Q. Go ahead.**
 18 A. Yeah, they do receive two days off, but I --
 19 they received two days off, yes.
 20 **Q. All right. Thank you.**
 21 **My second question is on -- in this case, PSP is**
 22 **requesting funding for just over 61 pilots by -- by the**
 23 **full phase-in of the proposed three-year tariff.**
 24 A. Yes.
 25 **Q. Taking a lot of -- actually, as of -- as of**

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1 **October 31, 2019, I believe PSP had 50 active pilots.**
 2 **Is that -- is that correct, subject to check?**
 3 A. That -- subject to check; yes, that's correct.
 4 **Q. All right. And do you believe that the -- do**
 5 **you believe the -- that PSP will realistically have 61**
 6 **active pilots by 2022?**
 7 A. No.
 8 **Q. So do you believe that the Board of Pilotage**
 9 **Commissioners will add -- in the near future increase**
 10 **the number of currently authorized licenses?**
 11 A. I think so. That's a hope. I think Dr. Tonn is
 12 working towards establishing an appropriate number of
 13 pilots, yes.
 14 **Q. So what is the basis for your belief that the**
 15 **Board will, at some point in the future, increase the**
 16 **number of licenses?**
 17 A. Because since 2018, when we -- when we began our
 18 meetings at the Fatigue Management Committee which is a
 19 Pilot Commission committee, we addressed four of the key
 20 issues. There's a Dr. Czeisler's recommendations. And
 21 that took us to the 065 hearing just addressing those
 22 four issues.
 23 During the 065 hearing in July, there was a lot
 24 of discussion about what constitutes an assignment and
 25 how should these items, such as meetings and repos, be

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1 classified and what is their impact on the target
 2 assignment level.
 3 And so we'll be addressing -- I believe, we'll
 4 be addressing the target assignment level at a later
 5 date with the Pilot Commission. I believe that's a
 6 direct Dr. Tonn and the Pilot Commission wants to go.
 7 And I think that the -- it will become even more evident
 8 that we need that many pilots.
 9 COMMISSIONER BALASBAS: All right. Thank
 10 you. No further questions at this time.
 11 THE WITNESS: Thank you.
 12 JUDGE PEARSON: Chair Danner, did you have
 13 any questions for this witness?
 14 CHAIR DANNER: Yeah, I do.
 15 EXAMINATION
 16 BY CHAIR DANNER:
 17 **Q. So, you know, I'm looking at the structure of**
 18 **the PSP, and the president and the vice president**
 19 **together under the tariff you are proposing, you are**
 20 **basically looking at a million dollar payroll. And I'm**
 21 **trying to understand looking at page 1 of your -- your**
 22 **testimony, you're talking about your role as being a**
 23 **full-time job.**
 24 **And I wonder if we could just walk through them**
 25 **and you could tell me how much time you spend on each of**

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1 **these tasks.**
 2 **First of all, let me ask you, since you have**
 3 **been vice president, have you done any vessel**
 4 **assignments yourself?**
 5 A. Yes.
 6 **Q. How many?**
 7 A. Well, in 2018, I -- I performed somewhere in the
 8 vicinity of 90 assignments; and in 2019, 30 assignments,
 9 vessel assignments.
 10 **Q. Okay. So you do take on vessel assignments,**
 11 **even though the vice president role is a full-time**
 12 **position?**
 13 A. We're seeking to have the role as full-time to
 14 where the vice president may not have to take vessels
 15 on, or the president. But right now, short staff, yes.
 16 **Q. Okay. And you say that you take on the duties**
 17 **of the president when he's unavailable. And he's**
 18 **unavailable a significant amount of time. About how --**
 19 **how much time is he unavailable where you're stepping in**
 20 **as kind of an acting president?**
 21 A. Can I define "unavailable"?
 22 **Q. Yes, please.**
 23 A. Well, unavailable may mean that he has -- and in
 24 fact, this is more often the case, he'll have
 25 conflicting meetings where he either can make it or

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1 can't make it, and it's important that we -- that Puget
 2 Sound Pilots be in the room at these meetings. But he
 3 has to choose on which of the stakeholder meetings he
 4 can attend. And that's what the real reference is to
 5 unavailable. But, plus -- his additional -- plus
 6 additional time for his own respite as well.
 7 **Q. And so you say that you are -- you serve on the**
 8 **Board of Directors. How often are the Board of**
 9 **Directors meetings?**
 10 A. Once a month.
 11 **Q. And how much time does it usually take you to**
 12 **prep for those meetings?**
 13 A. Well, the president and I write the agenda. And
 14 so there's -- there's that time and that's usually a
 15 week ahead of time. But that only takes, you know,
 16 maybe three or four hours. We're discussing the agenda
 17 throughout the month for the upcoming board meeting.
 18 But -- but then it takes a day of prep for the board
 19 meeting. I mean, I'm sort of -- I don't want to blow my
 20 own horn, but I'm sort of legendary for my meeting prep.
 21 **Q. Okay. And you say you serve on a number of**
 22 **PSP's committees. Which committees do you serve on?**
 23 A. Well, I'm the -- the Schedule Committee. Up
 24 until recently I was on the --
 25 **Q. What does the Schedule Committee do?**

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1 A. The Schedule Committee aligns the peak period
 2 work with when -- when pilots are coming on -- on to
 3 PPW, you need to make sure it's a random rapid draw,
 4 so -- so you need to make sure to align the right pilots
 5 going into the peak period work where it doesn't
 6 conflict with their vacation or doesn't conflict with
 7 their on-watch time because obviously.
 8 And also we have looked at schedules -- in fact,
 9 I designed the schedule that we have now with 11
 10 watches. And so we're looking constantly at ways to
 11 improve on our schedule.
 12 **Q. So the random selection and the -- the drawing,**
 13 **is that something that you feel needs to be done by you**
 14 **or the president and can't be assigned to the Executive**
 15 **Director or staff?**
 16 A. I think it carries more weight with the pilots,
 17 if a pilot has done it. But it -- it probably would be.
 18 **Q. And how much time do you spend on the Schedule**
 19 **Committee?**
 20 A. Any more, not much.
 21 **Q. Okay. And what other committees besides**
 22 **schedule?**
 23 A. I'm -- I'm -- I just was on the Fatigue
 24 Management Committee. I'm on the Internal Fatigue
 25 Management Committee at PSP. And now an alternate

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1 that's required to attend the -- they reclassified it
 2 the Pilot Commission, the Fatigue Management Committee
 3 now is called the Safety Committee. And I'm trying to
 4 think -- well, I'm on the Rate Committee, of course.
 5 **Q. All right. And how many -- how often do those**
 6 **committees meet?**
 7 A. Well, this year, quite a bit.
 8 **Q. In -- you know, for a typical year.**
 9 A. Well, going back to when we had rate hearings at
 10 the BPC, they would start occurring maybe three months
 11 before we filed once a month or something like that.
 12 They didn't occur like -- like now.
 13 And, of course, as I've grown in my position and
 14 knowledge at PSP, even when -- when we were under the
 15 old system, I was called upon to do more work for PSP.
 16 **Q. So again, how -- how often do these committees**
 17 **meet?**
 18 A. Rate Committee?
 19 **Q. Well, you mentioned the Rate Committee or the**
 20 **Safety Committee.**
 21 A. That's -- I don't think that there's a regular
 22 schedule. I think there's a meeting coming up this
 23 month. I think it is just month.
 24 I also attend a Pilot Commission meetings and
 25 Pilot Commission prep meetings.

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1 **Q. So back to the Safety Committee. You say**
 2 **there's a meeting coming up. But, typically, how often**
 3 **do you think you meet in a year?**
 4 A. I think it's probably about every other month.
 5 I don't think there's consistency, but I think Dr. Tonn
 6 would like to move towards some consistency there.
 7 **Q. Okay. And how much time does it take for you to**
 8 **prep for a Fatigue Management meeting or Safety**
 9 **Committee meeting?**
 10 A. Fatiguing. Again, I prepare extensively, so
 11 I -- I would say, probably, right around four or five
 12 hours.
 13 **Q. Okay. And then for the Rate Committee, how --**
 14 **how often do they meet?**
 15 A. Now?
 16 **Q. Yeah. In a typical year.**
 17 A. This year?
 18 **Q. Yes.**
 19 A. This year, the Rate Committee, I -- the entire
 20 Rate Committee meeting, probably -- well, this past two
 21 weeks we've met every day. But --
 22 **Q. But in -- you know, I'm trying to get a sense of**
 23 **a typical year. You know, so last year, how often did**
 24 **the Rate Committee meet?**
 25 A. Commissioner Danner, we met quite often -- once

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1 a week last year while we were trying to educate our
 2 attorneys on the pilot process.
 3 **Q. Okay. And how -- how much prep time did it take**
 4 **for the Rate Committee meetings?**
 5 A. Again, I -- it takes four or five hours for me.
 6 I mean --
 7 **Q. Okay.**
 8 A. I eat and sleep that right now.
 9 **Q. Okay. So are you -- do you feel that you're**
 10 **over-preparing for these meetings or are you doing just**
 11 **the right amount?**
 12 A. From yesterday, I think I under-prepare.
 13 **Q. All right. But you say that you're famous for**
 14 **preparing for these meetings, which means that you**
 15 **probably put more time in than other pilots do or other**
 16 **members for these committees?**
 17 A. Yes, by far.
 18 **Q. But you feel that that is essential?**
 19 A. I think is what ascended me to a leadership
 20 role, yes.
 21 **Q. Okay. So you also say you spent a substantial**
 22 **amount of time compiling and analyzing data to work on**
 23 **tariff design.**
 24 **Can you explain exactly what -- what work you**
 25 **did there and how -- how -- how -- is that an ongoing**

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1 **thing or is that just in preparation of this rate case?**
 2 A. Well, Captain Moreno will testify specifically
 3 about rate design. But -- but just broadly, we look at
 4 many tariffs all throughout the United States and -- and
 5 look at what was a good fit for Puget Sound.
 6 **Q. You said a substantial amount of your time was**
 7 **compiling that.**
 8 **How much time did you spend doing that? And**
 9 **would that be typical -- say, after this rate case is**
 10 **over, how much time would you be spending on tariff**
 11 **design? Those are two questions.**
 12 A. Probably very little.
 13 **Q. Okay. And then you also say that you spent a**
 14 **substantial amount of time on operational issues.**
 15 **What operational issues?**
 16 A. Well, there's -- there's -- there are many of
 17 them, but -- but it -- it's issues like tide and current
 18 windows. Does one pilot need to do this job or does
 19 two? And -- and the agent will give us maybe a time
 20 that they would like to depart one berth and be at
 21 another berth, or whatever. So it involves calculating
 22 each leg of the journey based on the current on the that
 23 leg and how long it will take. And if it will take too
 24 long, then we'll say, well, that's going take two
 25 pilots. But that takes a substantial amount of time.

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1 Then we also have the tide and current window so
 2 what -- the tidal windows were approaching berth in the
 3 waterway and what happens to us, and -- this is
 4 unfortunate. But what happens is, somebody may -- an
 5 agent may say, can I have a window for the 25th and 26th
 6 for this berth? And we'll give them a window of time
 7 when they can approach that berth. When they can be in
 8 that waterway and produce it for them. And then three
 9 hours later it will be, oh, well, then give us a window
 10 for these days.
 11 I mean, ultimately the agents don't just ask for
 12 one window, they -- they ask for many different windows.
 13 And sometimes it can be very frustrating and take a good
 14 substantial amount of time.
 15 **Q. So, again, is this the kind of operational issue**
 16 **that could be delegated to the Executive Director or to**
 17 **staff?**
 18 A. No.
 19 MR. FASSBURG: Let him finish the question.
 20 THE WITNESS: I'm sorry.
 21 BY CHAIR DANNER:
 22 **Q. Or does this need to be done by the vice**
 23 **president? Somebody at your salary level.**
 24 A. A pilot. It needs to be done by a pilot who
 25 understands all of the pertinent stuff that is required

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1 to move that ship safely in that waterway to that berth.
 2 **Q. Okay. Thank you.**
 3 **And then, lastly, you say that you worked**
 4 **closely with the Executive Director and the inhouse**
 5 **accountant in developing and fine-tuning the annual**
 6 **budget.**
 7 **Can you explain that role and how -- how much**
 8 **time do you spend on that?**
 9 A. Working with the Executive Director to calculate
 10 the budget involves -- involves having discussions with
 11 the boat managers with its station managers, other
 12 pilots, and trying to ascertain what needs to be done in
 13 the upcoming year and -- and what doesn't need to be
 14 done; looking at the training and what we can expect for
 15 training costs, which involves consultation with maybe
 16 the -- the Training Committee, and -- and the various
 17 aspects of the budget that are pilot specific; and then
 18 getting back with the Executive Director and sometimes
 19 haggling a lit bit over what should or should not be
 20 included in the budget. And ultimately, it's the Board
 21 who adopts the budget.
 22 **Q. Yeah. And so how much time do you think you**
 23 **spend in a typical year working on the annual budget?**
 24 A. Generally, a couple of days.
 25 **Q. A couple of days. Okay.**

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1 **And you track and monitor pilot retirements and**
 2 **callback day liability. Again, what percentage of your**
 3 **time do you feel you spend doing that?**
 4 A. Oh, probably -- it's not just pilot retirements,
 5 but it's also anticipated arrival of new pilots, but
 6 when -- when they will come into the roster as well.
 7 And I work with the -- the -- one of the pilots on the
 8 TEC. But, generally, I don't know, four or five days a
 9 year, I guess.
 10 **Q. Okay. So my -- this is -- you said that has**
 11 **involved into a full-time job. So the vice president**
 12 **position formally was not a full-time position; is that**
 13 **correct?**
 14 A. That's correct.
 15 **Q. About how long ago did it evolve into a**
 16 **full-time position?**
 17 A. Well, the definition of full-time. I mean,
 18 the -- the -- previously, the vice president was
 19 involved quite a bit. And it wasn't until sometime in
 20 2018 that -- that I became, more or less, full-time
 21 and -- so the vice president is often in the office on
 22 their days off. And I said to the president, I can't do
 23 this. I have a life. And so -- but previous to me in
 24 2018, the vice president was not quite as active. He
 25 was active, but had not done of number of days in there

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1 and his days off that I have.

2 **Q. Yeah. Thank you for that.**

3 **The reason I had this line of question is just**

4 **so I can get a sense of -- I mean, there's two concerns**

5 **here. One is that you are a pilot and the more**

6 **administrative work you do the less opportunity you have**

7 **to do vessel assignments. And so that gets into our**

8 **calculation of, you know, what is the appropriate number**

9 **for vessel assignments. The second is, is you are more**

10 **highly paid than some of the office staff, the Executive**

11 **Director, or the staff. And my question is, you know,**

12 **are there things that you're doing that could be**

13 **delegated down?**

14 **So I would just like to get your overall**

15 **impression.**

16 **Do you feel that this setup is as efficient as**

17 **possible or are you doing things that could be delegated**

18 **to others overall? Do you feel that you're -- you're**

19 **working efficiently?**

20 A. Well, I think maybe you raise a valid point

21 about a couple of the items that maybe could be done

22 with others. But what we haven't been able to discuss

23 is what I'm missing. What is missing from our

24 association. Not me specifically, but what is missing

25 from our association with the vice president focused

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1 right now on the Rate Committee and -- and these other

2 items.

3 What's really missing is the -- the vice

4 president working in conjunction with the president at

5 these important stakeholder meetings or internal

6 meetings so that when the president is in one meeting,

7 the vice president is there and up to speed. Oftentimes

8 what happens -- and it -- it really produces poor

9 representation. When the president has to choose

10 between conflicting meetings, and he -- he brings

11 somebody in who isn't knowledgeable on maybe the harbor

12 Safety Committee, or -- or a reference manual committee

13 or tribal meetings. Is it doesn't know the people in

14 the room. And so I'm -- and so the communication isn't

15 there. It's that continuity, that constant presence

16 from two highly knowledgeable people on what it takes to

17 safely move vessels in Puget Sound.

18 **Q. And you are doing everything you can to resolve**

19 **scheduling conflicts so that you're not scheduling**

20 **meetings over top of one another or maybe asking**

21 **meetings to be rescheduled so that --**

22 A. Yeah. Sorry. Sorry.

23 **Q. I think -- just asked about the --**

24 A. So many.

25 **Q. Go ahead, sir.**

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1 A. So many of the stakeholder meetings -- in fact,

2 most of the stakeholder meetings are not set by PSP. So

3 it is difficult to -- to schedule around the Coast

4 Guard's meetings or vessel traffic or harbor safety or

5 Lummi Tribal meetings or any of these meetings, if

6 they're not set by us, it's difficult to say, well, can

7 you reschedule it, because they don't involve just us.

8 CHAIR DANNER: Yeah, all right. Thank you,

9 those are all my questions, Your Honor.

10 And thank you very much, Mr. Carlson.

11 THE WITNESS: Thank you.

12 MR. FASSBURG: Judge Pearson, may I have one

13 question on redirect about the number of days off for

14 callback? I just want to make sure it's clear.

15 JUDGE PEARSON: You may. But the

16 Commissioners actually are not done yet. Commissioner

17 Rendahl and Commissioner Balasbas have additional

18 questions.

19 MR. FASSBURG: Okay. Great. I'm sorry

20 about that.

21 JUDGE PEARSON: Commissioner Rendahl.

22 EXAMINATION

23 BY COMMISSIONER RENDAHL:

24 **Q. Good morning, again, Captain Carlson.**

25 **So in your questions and answers with Chair**

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1 **Danner, I have a follow up. So you talked about in your**

2 **role on the Scheduling Committee that you will align**

3 **pilots with peak work periods considering their**

4 **vacations and their off-watch time. And we heard from**

5 **Captain von Brandenfels yesterday that he is ultimately**

6 **responsible for assignment of pilots if certain**

7 **situations arise. And he also testified that the COE**

8 **Dispatch System really is the system that dispatches the**

9 **pilots.**

10 **So how much are you doing or the president**

11 **doing -- in this alignment of pilots, how much are you**

12 **doing that's overriding what's in the COE Dispatch**

13 **System? Or are you inputting into the -- I'm trying to**

14 **understand if there's a random assignment of pilots and**

15 **yet you are going in and aligning pilots.**

16 **How does that relate to the work of the COE**

17 **Dispatch System? Does that make sense?**

18 **I'm trying to understand what you do versus what**

19 **the dispatch system does and how it's random if you're**

20 **essentially overriding a re-aligning?**

21 A. The question makes sense, but it is based on, I

22 think, a misinterpretation of what I said. Being, when

23 I say "the peak work period," I'm not referring to a --

24 a -- I'm referring to the requirement in the operating

25 rules that pilots come in three of their days off for

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1 the summer for -- throughout the cruise ship season, and
 2 that's what I'm referring to. Those are three days,
 3 and -- and our dispatchers, we produce for them a list
 4 that says what three days every pilot is on. It's
 5 usually three pilots come in every weekend.
 6 And it's not really overriding the dispatch
 7 system, but they enter into the system the days that
 8 they are supposed to come on, they enter them into the
 9 dispatcher so it produces three additional pilots during
 10 that, essentially, four-day period, we call it three.
 11 But anyway during that period.
 12 Does that answer your question?
 13 **Q. Yes. So, essentially, what you're doing on the**
 14 **Scheduling Committee is providing additional inputs into**
 15 **the COE dispatcher system?**
 16 A. To the dispatchers who provide it into the COE
 17 Dispatch system.
 18 COMMISSIONER RENDAHL: Okay. Thank you.
 19 JUDGE PEARSON: And Commissioner Balasbas,
 20 you had a follow-up question.
 21 COMMISSIONER BALASBAS: Yes, I do. Thank
 22 you.
 23 EXAMINATION
 24 BY COMMISSIONER BALASBAS:
 25 **Q. So, Captain Carlson, when a pilot is burning**

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1 **callback days they continue to hold their pilots**
 2 **license; is that correct?**
 3 A. Not always.
 4 **Q. So -- but if -- but in a hypothetically, if a**
 5 **pilot is burning callback days and they decide -- that**
 6 **pilot decides to hold on to his license, his or her**
 7 **license, does that -- by virtue of that pilot holding --**
 8 **continuing to hold the license, does that prevent a**
 9 **qualified pilot trainee who's ready to receive a license**
 10 **from getting one?**
 11 A. In the past, I think -- I forget exactly. I
 12 think it was in 2009, I'm not certain of the date. The
 13 Pilot Commission had determined that, by vote, to not
 14 license a pilot if another pilot still held the license.
 15 They authorize a certain number of licenses, and that's
 16 it.
 17 Now, I spoke with Dr. Tonn about this personally
 18 and she would like to get away from that, and that is
 19 just simply a vote of the Board of the Pilotage
 20 Commission on whether or not they want to license a
 21 pilot, if there are no -- if we are at the number of
 22 authorized pilots and two pilots are burning callback
 23 days and two pilots are ready. I have a feeling that
 24 the Pilot Commission is going to say, no, let's license
 25 them, which I would support.

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1 **Q. So when a pilot is burning callback days, can --**
 2 **and -- and they continue to hold their pilot's license,**
 3 **can they be -- can they be called to conduct the vessel**
 4 **movement?**
 5 A. There's a provision -- and I can't quote it and
 6 I don't know where it is. If it's in the WAC or the
 7 RCW. But there's a provision in there that requires
 8 that if a pilot is out of district, which that would
 9 qualify, or -- I can't give you the exact verbiage.
 10 But, essentially, you need to notify the pilot system --
 11 the Pilot Commission that you're going to be out of
 12 district for a certain time period. And you may need to
 13 do other -- depending on the duration of time you are
 14 out of district.
 15 **Q. Captain Carlson, I'm going to stop you there.**
 16 **You are not asking my question.**
 17 A. I'm sorry.
 18 **Q. My question is: When a pilot is burning**
 19 **callback days and they hold an active pilot's license,**
 20 **can the dispatch system call that pilot to conduct a**
 21 **vessel movement?**
 22 A. My understanding is only if they do it within
 23 the first 60 days. Only if they do a trip every
 24 60 days. But I'm not certain of that.
 25 **Q. All right. So PSP is asking in this case for**

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1 **funding of callback liability, my understanding is**
 2 **for -- for burning -- for pilots who will be likely**
 3 **burning callback days in the rate period.**
 4 **So my question to you is, as -- as policy**
 5 **matters, should -- should a pilot who is burning**
 6 **callback days continue to hold an active pilot's**
 7 **license?**
 8 A. The three that were -- that are in discussion
 9 are all 70, they don't hold a license.
 10 **Q. Okay. But in a hypothetical, if a pilot is not**
 11 **at the mandatory retirement age and has decided to keep**
 12 **the license and burn callback days, should that pilot**
 13 **be -- should that pilot be allowed to continue to hold**
 14 **that license?**
 15 A. You're asking for my opinion on that?
 16 **Q. I'm asking for your opinion.**
 17 A. If a pilot is uncertain of whether or not he's
 18 going to retire, he or she, then they ought to be able
 19 to. But if they're certain, they should surrender it.
 20 COMMISSIONER BALASBAS: All right. Thank
 21 you. No further questions.
 22 JUDGE PEARSON: And, Mr. Fassburg, you said
 23 you had one clarifying redirect regarding callback
 24 calculation?
 25 MR. FASSBURG: Yes.

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1 JUDGE PEARSON: Okay.

2 MR. FASSBURG: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. FASSBURG:

5 **Q. Captain Carlson, your answer to Commissioner**

6 **Balabas, I just wanted to make sure it was clear.**

7 **If a pilot uses a callback day throughout their**

8 **career as opposed to burning prior to retirement, when**

9 **you said there are two days off for the one callback**

10 **day, are those days both while the pilot is on watch or**

11 **is it -- can you explain how those days would be used?**

12 A. Yes. One day would be the day that he -- he or

13 she is on watch, and the other day is a distribution

14 day. They are both distribution days.

15 **Q. Is the other day a distribution day when you're**

16 **off watch as in you're not getting two extra days off?**

17 A. No, you get one day off.

18 MR. FASSBURG: Okay. Thank you.

19 JUDGE PEARSON: All right. Thank you.

20 Captain Carlson, you're excused at this

21 time.

22 Our next witness is Captain Steven Moreno.

23 Mr. Fassburg, is he going to be --

24 MR. FASSBURG: Captain Moreno, will be here

25 and I will be defending him, yes.

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1 THE WITNESS: Please give me a moment here

2 to get set up, please.

3 JUDGE PEARSON: Sure. Do we need to take a

4 quick break, Mr. Fassburg?

5 MR. FASSBURG: No, I'm sorry. They were

6 hoping to be off-camera just for the shuffle of

7 witnesses --

8 JUDGE PEARSON: Okay.

9 MR. FASSBURG: -- so it was off screen. But

10 I think we're set up.

11 JUDGE PEARSON: Great. Good morning,

12 Captain Moreno.

13 THE WITNESS: Good morning. It's "Mor-en-o"

14 if you would please --

15 JUDGE PEARSON: Moreno. Yes, I apologize.

16 THE WITNESS: I know -- it's not uncommon,

17 but I appreciate that. Thank you.

18 THE COURT: Sure. If you could please raise

19 your right hand, and I will swear you in.

20 Do you swear or affirm that the testimony

21 you give today will be the truth, the whole truth, and

22 nothing but the truth?

23 THE WITNESS: I do.

24 JUDGE PEARSON: Okay. Thank you.

25 All right. Mr. Fassburg, if you would like

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1 to introduce the witness.

2 MR. FASSBURG: Thank you.

3

4 STEPHAN MORENO, witness herein, having been

5 first duly sworn on oath,

6 was examined and testified

7 as follows:

8

9 DIRECT EXAMINATION

10 BY MR. FASSBURG:

11 **Q. Captain Moreno, will you please state your full**

12 **name.**

13 A. Captain Stephan Edward Moreno.

14 **Q. And will you state your business address,**

15 **please?**

16 A. It's at 2003 Alaska -- excuse me, Western

17 Avenue, Seattle, Washington.

18 **Q. Have you offered -- I'm sorry, your pre-filed**

19 **testimony and exhibits have been admitted into the**

20 **record.**

21 **Are you adopting your pre-filed testimony under**

22 **oath here today?**

23 A. Yes.

24 MR. FASSBURG: We will tender the witness

25 for cross-examination.

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1 CROSS-EXAMINATION

2 BY MS. DeLAPPE:

3 **Q. Good morning, Captain Moreno. My name is**

4 **Michelle DeLappe.**

5 A. Hello. Good morning.

6 **Q. Good morning. So you estimate that the licensed**

7 **pilots -- the number of licensed pilots in the United**

8 **States is approximately 1200 state licensed pilots;**

9 **correct?**

10 A. That is correct.

11 **Q. All right. And in your 29 years of piloting,**

12 **you're aware of approximately 10 pilots who have left**

13 **their pilotage district for another pilotage district**

14 **correct?**

15 A. Yeah, that was my testimony. Yes.

16 **Q. And you've identified three pilots who left**

17 **another pilotage district for the Puget Sound including**

18 **yourself; correct?**

19 A. Correct. Yes.

20 **Q. Thank you.**

21 **Moving on to another area that you testified**

22 **about. Many risk factors are associated with the size**

23 **of a vessel; right?**

24 A. Yes.

25 **Q. And UTC staff have -- as you understand it,**

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1 **recommended larger payments to be made by larger**
 2 **vessels?**
 3 A. On a per-dollar basis, yes.
 4 **Q. And your testimony regarding the risks, it did**
 5 **not propose a metric by which to quantify risk; is that**
 6 **right?**
 7 A. No, I think I did. For me as a pilot, I would
 8 say that risk is identified in the legislative --
 9 legislature as a protection of lives and property in the
 10 marine environment. If you used that as a risk metric.
 11 That's what I measure risk against. Am I protecting
 12 lives? Am I protecting the marine environment? So that
 13 is the -- if you want to call that a risk metric, those
 14 are the standards by which I conduct my piloting.
 15 **Q. Captain Moreno, you have Exhibit SM-10X in front**
 16 **of you?**
 17 A. I will in a moment.
 18 **Q. Thank you.**
 19 **And when you get that out, if you could please**
 20 **turn to page 21 of that exhibit. And that is PMSA's**
 21 **Data Request No. 424.**
 22 A. Okay.
 23 JUDGE PEARSON: I'm sorry, Ms. DeLappe, can
 24 you give me the page number again?
 25 MS. DeLAPPE: Certainly. It's page

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1 number 21 in the exhibit.
 2 JUDGE PEARSON: Thank you.
 3 THE WITNESS: Okay. I have it.
 4 BY MS. DeLAPPE:
 5 **Q. Thank you.**
 6 **And so right in the middle of the page, do you**
 7 **see there where it says, "My testimony did not propose a**
 8 **metric by which to quantify risk"?**
 9 A. Yes.
 10 **Q. Thank you.**
 11 A. I do see that.
 12 **Q. Does that -- is your testimony today any**
 13 **different from that?**
 14 A. No, it is not. It's --
 15 **Q. Thank you.**
 16 A. Again, as I said, I'm using the -- I guess you
 17 don't call it a metric, it's the measuring stick by
 18 which I measure my performance or what I think I'm
 19 expected to do as a pilot. So it is the legislative
 20 act. So answer to that question is I'm not changing it.
 21 **Q. Thank you. Great.**
 22 **If I can move, then, to a slightly different**
 23 **angle on vessel navigation risks. You agree that there**
 24 **are many ways to mitigate vessel navigate risks; don't**
 25 **you?**

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1 A. Yes, I do. I think that's what's expected of
 2 me, yes.
 3 **Q. Would you agree that the use of tugs, the**
 4 **presence of redundant propulsion and steering systems**
 5 **and requirements to use multiple pilots are all risk**
 6 **mitigations?**
 7 A. Yes. These are all -- tools, I guess, so to
 8 speak, that we utilize to mitigate risk, yes.
 9 **Q. Thank you.**
 10 **And might a large vessel with new technology**
 11 **that employs multiple risk mitigation strategies like**
 12 **those be less risky to a pilot than a small vessel**
 13 **without multiple risk mitigation strategies?**
 14 A. Simply stated, the more tools you have to -- to
 15 mitigate risk, the better, yes.
 16 **Q. Thank you. No further questions.**
 17 **JUDGE PEARSON: All right. Mr. Fassburg, do**
 18 **you have any redirect?**
 19 MR. FASSBURG: I do not.
 20 JUDGE PEARSON: Okay. And staff has also
 21 indicated cross for Captain Moreno.
 22 MR. FUKANO: Yes, just a brief question.
 23 CROSS-EXAMINATION
 24 BY MR. FUKANO:
 25 **Q. Captain -- and it's Captain Moreno; is that**

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1 **correct?**
 2 A. That's correct. It's Fukano?
 3 **Q. Fukano.**
 4 A. Fukano. Thank you.
 5 **Q. Captain Moreno, would you please turn to your**
 6 **filed rebuttal testimony at SM-2T at page 12?**
 7 A. Page 12, you said.
 8 **Q. Yes, sir.**
 9 A. I got it.
 10 **Q. And do you see the table that begins on page 12?**
 11 A. The table begins on 12 and goes to 13; is that
 12 correct?
 13 **Q. Yes.**
 14 A. Okay. Yes.
 15 **Q. And in that table, you compare staff's rate**
 16 **design to PSP's proposed tariff design; is that correct?**
 17 A. Correct.
 18 **Q. And the comparison to the PSP proposed tariff**
 19 **only includes the value of the first year of the**
 20 **three-year rate plan; is that correct?**
 21 A. That's correct, yes. It's the PSP year one
 22 revenue request using the UTC methodology. And --
 23 excuse me, the UTC staff's methodology.
 24 **Q. And is it also correct that PSP's proposed**
 25 **tariff rates would be higher in year two and year three?**

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1 A. Yes.

2 MR. FUKANO: No further questions.

3 JUDGE PEARSON: Mr. Fassburg, any follow-up?

4 MR. FASSBURG: I do not have any follow-up.

5 Thank you, Captain Moreno.

6 THE WITNESS: That's it.

7 JUDGE PEARSON: But Commissioners.

8 THE WITNESS: Oh, yeah, that's right.

9 JUDGE PEARSON: Do the Commissioners have

10 questions for Captain Moreno? No?

11 Then Captain Moreno, you are excused. Thank

12 you.

13 THE WITNESS: Thank you. Good morning.

14 JUDGE PEARSON: And that brings us to the

15 end of PSP's witnesses.

16 Just to clarify for the record. PSP raised

17 no objections to the cross-exhibits IC-42X, JN-12X, and

18 GQ-11X. So those are admitted into the record.

19 And would we like to take a short break now?

20 You can give me head nods.

21 CHAIR DANNER: Yeah. We can take ten

22 minutes.

23 JUDGE PEARSON: Let's go ahead and take ten

24 minutes. When we come back -- let's see who's next.

25 When we come back, Mr. Ramirez will be testifying.

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1 So we'll be in recess for ten minutes.

2 We'll reconvene at 10:50. Thank you.

3 (A break was taken 10:41 a.m. to 10:51 a.m.)

4 JUDGE HOWARD: Thank you, everyone. Let's

5 be back on the record.

6 Again, this is Administrative Law Judge

7 Michael Howard. I will be handling the remaining

8 witnesses in the hearing today. Taking over

9 Judge Pearson.

10 And it sounds like PMSA's first witness is

11 John Ramirez.

12 And Mr. Ramirez, I see that you have your

13 camera on. I will swear you in.

14 THE WITNESS: Okay.

15 JUDGE HOWARD: Would you please raise your

16 right hand. Do you swear or affirm that the testimony

17 you give today will be the truth, the whole truth, and

18 nothing but the truth?

19 THE WITNESS: I do.

20 JUDGE HOWARD: Thank you.

21 Ms. DeLappe, would you please introduce the

22 witness.

23 MS. DeLAPPE: Yes. Thank you.

24 //

25 //

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1 JOHN C. RAMIREZ, witness herein, having been

2 first duly sworn on oath, was

3 examined and testified as

4 follows:

5

6 DIRECT EXAMINATION

7 BY MS. DeLAPPE:

8 **Q. Mr. Ramirez, please state your full name for the**

9 **record?**

10 A. John Charles Ramirez.

11 **Q. And the name of your employer?**

12 A. Willamette Management Associates.

13 **Q. And your business address?**

14 A. It's 111 Southwest Avenue, Suite 2150, Portland,

15 Oregon 97204.

16 **Q. Thank you.**

17 **And as I believe you know the -- the exhibits**

18 **have been adopted, the pre-filed testimony and exhibits.**

19 **Are you now adopting your pre-filed testimony**

20 **exhibits?**

21 A. Yes.

22 MS. DeLAPPE: Thank you.

23 I tender the witness.

24 JUDGE HOWARD: Mr. Wiley, you may proceed.

25 MR. WILEY: Thank you, Your Honor.

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1 CROSS-EXAMINATION

2 BY MR. WILEY:

3 **Q. Welcome, Mr. Ramirez. I was having a little bit**

4 **of trouble hearing you. Can you hear me okay?**

5 A. I can hear you fine. Can you hear me now?

6 **Q. Yes, it's a little clearer. Thank you.**

7 A. Let me turn up my mic. Let me move this a

8 little closer.

9 **Q. Can you hear me now?**

10 A. Yeah.

11 **Q. Well, welcome. I understand this is your first**

12 **time testifying in a rate-type proceeding; is that**

13 **correct?**

14 A. That's correct.

15 **Q. I wanted to kind of synthesize what I understand**

16 **your role was in this proceeding for PMSA.**

17 **You testified in JCR-1Tr2 that you performed,**

18 **quote, a forensic analysis on -- this is my language --**

19 **the current BPC tariff to determine whether its**

20 **operating costs were recovered and whether PSP owners**

21 **were afforded a fair return on their investments; is**

22 **that correct?**

23 A. Sure. That's correct.

24 **Q. Okay. And as a matter of fact, you admitted,**

25 **did you not -- and do you have your cross-exhibits there**

Page 421

1 in front of you? Did Ms. DeLappe provide those to you?

2 A. Yes.

3 Q. So as a matter of fact, you admitted in response

4 to PSP's Data Request No. 100 to PMSA, which is Exhibit

5 JCR-8X in this proceeding that you -- you did no

6 analysis of whether the proposed PSP tariff was fair and

7 reasonable; is that correct?

8 A. That is correct.

9 Q. In addressing the current BPC tariff, you apply

10 what you termed a traditional return on rate base or

11 return on rate base methodology, which you deemed to be

12 appropriate here; is that correct?

13 A. That is correct.

14 Q. Okay. And your conclusion in performing that

15 analysis was that PSP was currently earning an

16 inordinately high return on equity based on your

17 analysis of what you termed a, quote, "fair pilotage

18 labor expense," unquote, and then also provide what they

19 derived return on equity or return on investment study

20 of transportation industry returns in a model you

21 described in your testimony and exhibits; is that

22 correct?

23 A. I think my conclusion was that their current

24 tariff exceeded a fair and reasonable return.

25 Q. And that's an inordinately high return then, in

Page 422

1 your view?

2 A. I didn't -- no. I think that it exceeds a fair

3 return.

4 Q. Okay. What -- how do you -- what's your range

5 of fair return based on your testimony?

6 I took it, it was somewhere in the 13- to

7 15-percent range; is that correct?

8 A. Yeah, based on -- on required rate of return

9 using the CAPM or the buildup method, it was between 13

10 and 15 percent.

11 I also looked at other return measures that were

12 as high as the low 30s. And so, yeah, based on my

13 analysis, the current return to the PSP members was

14 higher than that.

15 Q. In going back to your -- your fair pilotage

16 labor expense equivalent, you affirmed your conclusion

17 of -- of the attributed amount, which you arrived at

18 \$162,000 at -- in response to a data request, despite

19 being referred to contrary data suggesting your

20 calculations was possibly hundreds of dollars below or

21 too low based on a report that we cited you to from

22 2012, which is Exhibit JCR-9X, did you not?

23 A. Let me pull that one -- is that the -- I believe

24 that was --

25 Q. It's PSP Data Request No. 179. Excuse me, 108.

Page 423

1 108.

2 A. Hold on one second. I accidentally closed down

3 that exhibit instead of opening it. I had it open, so

4 let me pull it up here real quick. Bear with me.

5 Well, is that the NPR article that you are

6 referring to?

7 Q. Yes.

8 A. We can talk about that, though I don't have it

9 in front me.

10 Q. Mr. Ramirez, my question was only whether you,

11 in being referred to that -- to that article, you still

12 maintained in response to the data request that your

13 fair pilotage labor expense of 162,000 in 2020 was

14 reasonable?

15 A. Yes, that's correct.

16 Q. Additionally, you -- do you continue to rely in

17 your analysis on the BLS wage data that both PSP and

18 staff witnesses distinguished as not consisting or being

19 comprised of state-licensed pilots and also pointing to

20 dispirit training and skill sets amongst captain Mason

21 pilots versus State pilots?

22 A. Well, I'm not -- I'm still relying on the BLS

23 data in my analysis, yes. And I do believe that it does

24 clearly state that it does include State licensed pilots

25 in the BLS (audio disruption) information.

Page 424

1 Q. That's what you said, but did you ever establish

2 that it did?

3 A. Yes.

4 Q. And how was that?

5 A. I provided responses to the data request that

6 showed exactly the titles -- representative titles of

7 what was included in the data.

8 Q. Yeah?

9 A. And that says that -- so I want to read what it

10 says for pilots. It says, "a sample of the reported job

11 titles in this data include boat pilots, docking pilots,

12 harbor pilots, marine pilots, pilots, river pilots, ship

13 pilots, State pilots and tugboat pilots."

14 Q. And you heard staff's testimony that there was

15 no way to discern how many of the state pilots were

16 included in that data or no way to disaggregate that

17 data, did you not?

18 A. That's true.

19 Q. Okay. And -- as a matter of fact, in response

20 to Data Request No. 179 from PSP, which is cross Exhibit

21 JCR-10 you admitted, did you not, that there was no way

22 to disaggregate the BLS data that you are relying upon?

23 A. That's true.

24 Q. By the way, your -- your analysis included an

25 industry study that -- that also included a review of

Page 425

1 transportation company sale transactions. Do you recall
 2 that in your testimony at page 13?
 3 A. Yes.
 4 Q. Can you please explain what transportation
 5 company sale transaction pricing has to do with allowed
 6 returns on a regulated transportation company's rates?
 7 A. Sure. What I was doing was looking at those
 8 transactions as a way of saying, the PSP members
 9 have an -- they can invest in the PSP, or they could
 10 take that \$400,000, their buy-in payment, and they can
 11 invest in another similar investment.
 12 So I looked at transportation and (audio
 13 disruption) that had been purchased. And so what would
 14 be the -- the EBITDA return on that purchase. So the
 15 purchasers of water transportation companies would, on
 16 average, get a return on their investment between, I
 17 think it was 4 percent and 30 percent. So I looked at
 18 294 transactions to get that data.
 19 Q. I recall that, Mr. Ramirez. But do you know if
 20 the commission considers in any way the purchase price
 21 of the transportation company to be recovered in
 22 regulated rates?
 23 A. I don't know.
 24 Q. You also describe your concept of rate base
 25 return in your testimony at JCR-2Tr, page 4, line 4.

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1 And you have a footnote in which you define a return on
 2 rate base as including interest on debt and return on
 3 equity.
 4 JUDGE HOWARD: Mr. Wiley.
 5 BY MR. WILEY:
 6 Q. Do you understand that that is incorrect?
 7 JUDGE HOWARD: Mr. Wiley, I'm sorry to
 8 interrupt. But I think your exhibit -- your exhibit
 9 reference there might have been off. Could you -- could
 10 you give us that exhibit citation again.
 11 MR. WILEY: Yes. It's his testimony, his
 12 direct testimony at page -- let me get it for you. It's
 13 page JCR-12 -- 1 TR 2. There's been a lot of revisions,
 14 I'm sorry. I'm trying to keep track.
 15 And it's footnote 2 on page 5. I'm sorry,
 16 page 5.
 17 JUDGE HOWARD: Thank you. Sorry for
 18 interrupting.
 19 MR. WILEY: No, thank you, Your Honor.
 20 THE WITNESS: And I'm sorry. Will you
 21 please repeat the question.
 22 BY MR. WILEY:
 23 Q. Yes. I'm asking you about your testimony in
 24 that footnote, and I'm saying you described there your
 25 concept of rate base, which you define as including

Page 427

1 interest on debt and return on equity.
 2 Do you now understand that is incorrect?
 3 A. No.
 4 Q. You don't agree?
 5 A. No, I don't agree.
 6 And let me just verify. Which footnote is it in
 7 my testimony?
 8 Q. Footnote 2. Page 5, Exhibit JCR 1 TR 2.
 9 A. Yeah, I'm fine with that. Yes.
 10 Q. When you say yes, are you saying you changed
 11 your view on that or you are still standing by that?
 12 A. I'm still standing by that.
 13 Q. And did you see Mr. Kermod's testimony about
 14 the error in his cross-answering testimony?
 15 A. No.
 16 Q. He critiqued that analysis as completely
 17 incorrect, just for the record.
 18 A. Okay.
 19 Q. Okay. Do you understand that a return on rate
 20 base is only allowed under commission rate regulation
 21 for facilities and assets that are used and useful in
 22 providing regulated service?
 23 A. Okay.
 24 Q. Do you understand that?
 25 A. Yes.

Page 428

1 Q. So interest on debt and return on equity would
 2 not seem to qualify in that category, would it?
 3 A. Well, I think that the return on -- it's the
 4 return on the capital that was used to invest in the
 5 operations of the business.
 6 Q. That's not what you said in -- in your footnote
 7 at footnote two. So I think you need to clarify that if
 8 you can.
 9 Let me move if you can't.
 10 Do you wish to revise your testimony that in the
 11 current PSP tariff clause it is earning a return on
 12 equity of approximately 61 to 62 percent under the
 13 current tariff?
 14 A. No.
 15 Q. You don't wish to revise your testimony; is that
 16 your answer?
 17 A. That's correct.
 18 Q. Okay. Do you acknowledge that that is
 19 incorrect, though, because of PSP's accrued liabilities?
 20 A. I disagree with that.
 21 Q. Okay. Did you --
 22 A. They are accrued liabilities in my analysis.
 23 Q. Excuse me?
 24 A. I said, I think I took into consideration they
 25 are accrued liabilities in my analysis.

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1 **Q. So you're saying that you took into account**
 2 **their off balance sheet liabilities and -- and despite**
 3 **witnesses from both PSP and staff who highlighted that**
 4 **effectively that nullified any return on -- on equity or**
 5 **any return on investment in PSP's current rates?**
 6 A. I'm not sure how they were calculating their
 7 equity or return on equity. But my return on equity
 8 considered their off balance sheet liabilities.
 9 **Q. Well, I think Dr. Khawaja showed that at an**
 10 **average, fair pilotage rate at 400,000 you would have a**
 11 **negative return on equity. And I believe you answered a**
 12 **data request acknowledging that, did you not?**
 13 A. I can't speak to his testimony. And I -- and if
 14 you want me to answer the question, you would have to
 15 point me to what you're referring to. I'm not sure what
 16 you are referring to.
 17 **Q. I'm referring to Dr. Khawaja's testimony, and**
 18 **I'm referring to Danny Kermode's testimony, both of**
 19 **which said your return on equity was completely flawed**
 20 **because it -- it was zero or near zero?**
 21 MS. DeLAPPE: I would object.
 22 I think Mr. Wiley needs to point to the
 23 specific data request where he believes Mr. Ramirez
 24 opined on this.
 25 MR. WILEY: I think subject to check I don't

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1 have his data request in front of me, all of his data
 2 request.
 3 But I think subject to check, I'll stand by
 4 that question.
 5 MS. DeLAPPE: And I would just object --
 6 MR. WILEY: Do you want me to rephrase the
 7 question?
 8 MS. DeLAPPE: Since it is not one of the
 9 cross exhibits and it is not in the record, that that
 10 question be struck.
 11 MR. WILEY: Your Honor --
 12 JUDGE HOWARD: Well, I'm hesitant to have
 13 him cross on some material that's not placed in front of
 14 him. So if you could focus the question and include
 15 what you are referring to, I think that would be
 16 helpful.
 17 And if you do want to point him to testimony
 18 from other witnesses, maybe we could also look at that.
 19 MR. WILEY: I'm referring very specifically
 20 to Dr. Khawaja's and Mr. Kermode's testimony regarding
 21 his analysis of return on equity. And I can find that
 22 if we want to refer him specifically to those lines.
 23 But assuming that -- that their direct
 24 testimony, which is in the record in this hearing,
 25 suggested that your analysis of return on equity was

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1 completely flawed because of the failure to consider the
 2 accrued liabilities of PSP, would you accept that --
 3 that your testimony was incorrect in that area?
 4 MS. DeLAPPE: I would like to object again.
 5 I believe that we need to have the specific language in
 6 front of us for us to be able to embark on this --
 7 MR. WILEY: I'm going to get it.
 8 JUDGE HOWARD: It sounds like Mr. Wiley will
 9 rephrase and include the references. I think that would
 10 be helpful.
 11 MR. WILEY: Can we take just a couple
 12 minutes so I don't have to fumble with the notebooks to
 13 find the testimony, please.
 14 JUDGE HOWARD: Certainly. Do you think you
 15 can do it shortly, or should we go off the record? Do
 16 you have them right here?
 17 MR. WILEY: Yeah, I've got Mr. -- okay.
 18 I've got Mr. Kermode's cross-answering testimony. And
 19 let me find Dr. Khawaja's rebuttal and I will be right
 20 with you.
 21 MS. DeLAPPE: If I might just confirm,
 22 Mr. Ramirez, whether he has the -- those exhibits at
 23 hand.
 24 MR. WILEY: That's fair enough.
 25 THE WITNESS: I do not. I would need to

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1 have somebody maybe share their screen. I was not
 2 expecting to testify on those.
 3 JUDGE HOWARD: Ms. DeLappe, would you be
 4 able to e-mail the witness copies of what Mr. Wiley is
 5 referring to and cc myself and Judge Pearson and
 6 opposing counsel?
 7 MS. DeLAPPE: Thank you. I do believe in
 8 that case it would be helpful to have five minutes of
 9 break, please.
 10 JUDGE HOWARD: Fair enough. Let's go off
 11 the record.
 12 (A break was taken from 11:10 a.m. 11:15 a.m.)
 13 JUDGE HOWARD: All right. Thank you,
 14 everyone.
 15 Let's be back on the record, and we will
 16 resume the cross-examination of Mr. Ramirez. He has
 17 been provided copies of these exhibits. And Mr. Wiley,
 18 you may proceed.
 19 BY MR. WILEY:
 20 **Q. Yes. Mr. Ramirez, have you had a chance to look**
 21 **at the testimony that -- has Ms. DeLappe provided you**
 22 **the testimony?**
 23 A. She has provided me the testimony. But now if
 24 you can direct me where to look. I can do that.
 25 **Q. In DK-3T page 9, lines 4 through 12.**

Page 433

1 A. Page 9.

2 **Q. Okay. And I'm specifically referring to his**

3 **sentence testimony on page 9 that says, "However,**

4 **because PSP has negative equity, when one accounts for**

5 **the off-book liability there is no equity return on**

6 **investment in the present case."**

7 **Do you see that testimony?**

8 A. I do see that.

9 **Q. And then I would call your attention to SK-3T,**

10 **page 13, lines 18 to page 14, line 2. That's the**

11 **testimony of Dr. Khawaja that I was referring to.**

12 **Do you see that testimony?**

13 A. Yeah. I was having a hard time finding the page

14 number, but now I found it. So let me get to that

15 page 13. And it's lines what?

16 **Q. It's lines 18 on page 13, through page 14**

17 **line 2. Take a chance to read that.**

18 **And I'll read it for the record, at least some**

19 **of it. Says, "That said, the associated computation of**

20 **a 62-percent return on investment by Mr. Ramirez is also**

21 **irrelevant. Mr. Ramirez takes the difference between**

22 **actual revenue and his computation of a revenue**

23 **requirement and labels that excess profit.**

24 **"Ironically, that supposed excess profit would**

25 **disappear altogether had he used a more appropriate and**

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1 **accurate compensation for pilotage. For example, had he**

2 **used 400,000 instead of 162,000 his ROI declined to near**

3 **zero?"**

4 **Do you see that testimony?**

5 A. I do.

6 **Q. Do you now wish to revise your testimony based**

7 **on those assessments of the off book liabilities by both**

8 **staff and PSP that an ROI was being generated of 61 to**

9 **62 percent?**

10 A. No.

11 **Q. Okay. Do you acknowledge that that would be**

12 **incorrect if you -- if you calculated PSP's accrued**

13 **liabilities?**

14 A. I did consider their accrued liabilities in my

15 determination of their required part of their return on

16 equity.

17 **Q. You didn't consider the balance sheet?**

18 A. No -- no, I didn't consider the equity value

19 that was presented on their balance sheet. That's

20 correct.

21 **Q. And wouldn't you have to do that to come up with**

22 **an accurate calculation?**

23 A. No, I used the -- I calculated their value of

24 equity based on their bylaws and what a pilot -- a

25 current pilot that was buying into the association would

Page 435

1 need to pay to buy into the association, and then I

2 multiplied that by the number of pilots that are in the

3 association to tell them what their value of equity is.

4 **Q. I understand that's what you testified to. But**

5 **my question is whether you looked at the financial**

6 **statement and the balance sheet to calculate a return on**

7 **equity?**

8 A. Well, I didn't use the balance sheet to

9 calculate my return on equity. I used their financial

10 statement, their income statement to derive a return on

11 equity.

12 **Q. So the answer is yes, you did look at the**

13 **financial statement?**

14 A. You said did I look at the balance sheet. But I

15 did look at the financial statement, yes.

16 **Q. Did you look at note 10 of the financial**

17 **statement?**

18 A. I don't recall what that is. But I did look at

19 the financial statements. If you want to read me that

20 note, I can talk to it.

21 **Q. I don't think I need to read you the note. I**

22 **just need to know whether you looked at note 10; yes or**

23 **no?**

24 A. Well, I read through the financial statements.

25 I don't recall what note 10 says.

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1 JUDGE HOWARD: Mr. Wiley, we -- we are at

2 the end of the estimated 30 minutes, so just keep --

3 MR. WILEY: (Audio disruption.)

4 JUDGE HOWARD: Mr. Wiley, please be careful

5 about speaking over me due to the court reporter here.

6 But yes, it sounds like you have a few more

7 questions.

8 MR. WILEY: Your Honor, I do.

9 JUDGE HOWARD: Okay. Great.

10 BY MR. WILEY:

11 **Q. Mr. Ramirez, with regard to your reference to**

12 **fair return on pilotage labor, would you agree with me**

13 **that as shown in the financial statement which you've**

14 **just said you read, which is Jan 04, there is no stated**

15 **expense for pilot salaries?**

16 A. That's correct.

17 **Q. And that's because the pilots are not employees,**

18 **but owners; is that correct?**

19 A. I'm not actually sure why there's no salary

20 expense. I find that very unusual.

21 **Q. Well, if you're an owner, do you believe that**

22 **your compensation should be listed as a salary expense?**

23 A. If you are providing labor, yes.

24 **Q. So you're saying that -- that partnerships that**

25 **provide labor should deduct the -- the distribution that**

Page 437

1 **they earn as an expense?**

2 A. No. There's a difference between distribution

3 and salary.

4 **Q. That's my point. Are you treating them**

5 **synonymously?**

6 A. No. In fact, the exact opposite. That's why I

7 said it's very unusual that I didn't see a salary

8 expense on their financial statements because they are

9 providing labor. So I would have expected to see a

10 labor wage expense.

11 **Q. Well, we agree the pilots contribute labor to**

12 **the association.**

13 **But through that labor contribution, they earn a**

14 **share of net income, not a salary, don't they?**

15 A. Typically, you would -- I would expect from the

16 companies that I analyze, and I have analyzed a lot

17 them, I would usually expect to see a labor wage or a

18 salary expense line item, and I would also expect to see

19 owners distribution.

20 In this case, I'm only seeing owners

21 distribution and I'm not seeing a salary expense.

22 **Q. Because they don't have salaries. Could that be**

23 **possible as the reason why you're not seeing it?**

24 A. Well, it -- given that they are providing labor,

25 I would expect to see a salary.

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1 **Q. Okay. Well, I'm a partner in a law firm. I**

2 **don't receive a penny of salary. I receive only a**

3 **distribution based on the ultimate profit of the**

4 **organization. Isn't that more typical?**

5 A. No.

6 **Q. Okay.**

7 A. In fact, the IRS has real issues with that.

8 **Q. Well, I have a K-1 and I report all of my**

9 **distribution income. So I don't know what you're**

10 **talking about, but we'll move on.**

11 **In order to -- to model your return on equity**

12 **concept, you provided a calculation for salary as an**

13 **expense, which you reflected on your return on equity**

14 **exhibit; correct?**

15 A. Yes.

16 **Q. Okay. And in your view as described in your**

17 **testimony, in order to determine the value of pilot**

18 **labor, you would ultimately multiply a number of pilots**

19 **by a dollar amount that represents what each pilot**

20 **should earn for their work; correct?**

21 A. If I'm understanding your question correctly,

22 and I -- to do -- to derive a fair labor expense, I used

23 the Bureau of Labor Statistics data of 162,000 per

24 pilot, and I multiplied that by the number of pilots

25 that PSP employs.

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1 **Q. So that's what I'm asking.**

2 **So you took your fair labor pilot expense**

3 **equivalent and multiplied it times the number of**

4 **pilots; correct?**

5 A. That's correct.

6 **Q. And am I correct that in this calculation you**

7 **estimated that a value of pilot labor using the BLS**

8 **statistics that you just alluded to?**

9 A. That is correct.

10 **Q. Okay. And in arriving at this calculation, you**

11 **assume that each pilot performed their service in a**

12 **regular workload without overtime; is that correct?**

13 A. That is correct.

14 **Q. And even if the fair value of pilotage labor was**

15 **found to be a different number than you arrived at,**

16 **would -- it would not change the recommended formula**

17 **that we just discussed of fair value of pilotage labor**

18 **times number of pilots; correct?**

19 A. I think I'm understanding your question. But

20 can you restate that, I just want to be clear.

21 **Q. Yeah. Even if a different figure than your**

22 **162,000 -- 162,000 was established as the fair value of**

23 **pilotage labor, you would still use your formula to**

24 **multiply what that number was against the number of**

25 **pilots; correct?**

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1 A. That's correct.

2 **Q. And finally, just under your approach so that**

3 **I'm clear, benefits to pilots would not be treated as**

4 **income because under your approach all income to pilots**

5 **is treated as an expense; is that correct?**

6 A. I'm not -- I'm sorry. I'm not following what

7 you're saying. Say that one more time.

8 **Q. Under your approach, benefits to pilots would**

9 **not be treated as income because under your approach all**

10 **income to pilots is an expense; is that correct?**

11 A. I'm confused by the terminology that you're

12 using. Yeah, I'm confused by that question. I'm sorry.

13 MR. WILEY: No further questions.

14 JUDGE HOWARD: Thank you.

15 Ms. DeLappe, any redirect?

16 MS. DeLAPPE: Yes, please. Thank you.

17 REDIRECT EXAMINATION

18 BY MS. DeLAPPE:

19 **Q. Mr. Ramirez, Mr. Wiley asked you about an NPR**

20 **article; right? Do you remember that?**

21 A. Yes.

22 **Q. And did you review that NPR article?**

23 A. I did.

24 **Q. Great. And I would just refer everyone to**

25 **Exhibit JCR-9X, and that's PSP Data Request No. 108. It**

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1 has a link there to the article; is that right,
 2 Mr. Ramirez?
 3 A. Yes.
 4 Q. So does that article cite any source at all for
 5 the \$400,000 average salary?
 6 A. No.
 7 Q. Do you have any idea where NPR got that?
 8 A. It -- it says it's some report from -- I'm not
 9 reading it in front of me, I think it's Michigan or
 10 Minnesota. Michigan.
 11 Q. And so do you -- does it also in that article,
 12 do they talk about pilots who might be included in BLS
 13 data?
 14 A. Well, I think they also talked about LA pilots,
 15 so I think those LA pilots could be included in that
 16 data, sure.
 17 Q. And why do you think that?
 18 A. Because they're state employees, so I would
 19 imagine that that's something that would have been
 20 reported in the BLS data.
 21 Q. Mr. Wiley also, in talking about the BLS data,
 22 and the specific compensation you -- you talked about
 23 the specific compensation that you chose.
 24 Can you describe for us where that is on the
 25 range of the BLS data that you looked at?

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1 A. Oh, sure.
 2 So I selected the 90th percentile of the data
 3 that was provided. So I wanted to make sure that
 4 because the pilots are provided -- or do have a very
 5 specialized kind of work, I wanted to make sure that the
 6 data set that I was looking at was looking at the high
 7 end of that range, so it would be compensating for
 8 that -- those skills. Because the range did go from, I
 9 think, I don't know, 40,000 up to over 106 -- up to
 10 162,000. So I took the high end of the range.
 11 Q. Thank you.
 12 You also spoke about the compensation of the PSP
 13 pilots as presented in their financials.
 14 Were you able to find anything for compensation
 15 that was not aggregated with owner distributions?
 16 A. No.
 17 Q. And do you have any clarifications that you
 18 wanted to make regarding your disagreement with
 19 Dr. Khawaja and with staff regarding the idea of
 20 negative equity as applies to PSP?
 21 A. Oh, well, I disagree that they have negative
 22 equity. Because I do think that the bylaws of the
 23 company have provided a formula, the formula that the
 24 PSP uses very periodically to buy pilots into and out of
 25 the association.

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1 So that agreement provides a market for their
 2 equity. So if I just take, for example, a current pilot
 3 would have to pay about \$400,000 to buy into this
 4 association.
 5 So if, theoretically, all of the pilots had to
 6 be bought out or into the association right now, you
 7 would multiply that \$400,000 by the number of pilots and
 8 that would give you the value for their equity.
 9 MS. DeLAPPE: Thank you. No further
 10 questions.
 11 JUDGE HOWARD: Do we have any questions from
 12 the Commissioners?
 13 CHAIR DANNER: No questions.
 14 JUDGE HOWARD: Commissioner Balasbas.
 15 COMMISSIONER BALASBAS: Thank you.
 16 EXAMINATION
 17 BY COMMISSIONER BALASBAS:
 18 Q. Good morning, Mr. Ramirez.
 19 A. Good morning.
 20 Q. When you reviewed the PSP financial statements
 21 you stated in response to your cross-examination that
 22 you did not find a line for salaries?
 23 A. So to be clear, there was a line for salaries,
 24 but those are the administrative salaries. Those aren't
 25 the labor salary for the pilots.

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1 Q. Okay. So that would be the administrative
 2 salaries of the staff of the organization?
 3 A. That is correct.
 4 COMMISSIONER BALASBAS: All right. Thank
 5 you.
 6 JUDGE HOWARD: Any further questions from
 7 the Commissioners?
 8 All right. Hearing none, Mr. Ramirez, thank
 9 you for your testimony. You are excused.
 10 You may turn off your camera and mute your
 11 microphone. Thank you.
 12 THE WITNESS: Thank you.
 13 JUDGE HOWARD: The next witness for PMSA is
 14 Captain Moore, I see that the plan cross for Captain
 15 Moore is a few hours. And of course, we're going to
 16 have our -- something of a lunch break here.
 17 Would the Commissioners be agreeable to
 18 starting Captain Moore now and then having a hard stop
 19 at 12 and breaking for lunch?
 20 CHAIR DANNER: Yeah. And depending how the
 21 flow is, we could extend that to 12:15, if necessary.
 22 JUDGE HOWARD: And Captain Moore, are you
 23 able to hear me? It looks like you may be muted.
 24 THE WITNESS: Can you hear me now?
 25 JUDGE HOWARD: Yes.

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1 And Mr. Fassburg, I see that you are back.
 2 MR. FASSBURG: Yes.
 3 THE WITNESS: You can see my video, yes?
 4 JUDGE HOWARD: Yes.
 5 Captain Moore, I will swear you in and then
 6 we will begin the examination.
 7 Can you please raise your right hand. Do
 8 you swear or affirm that the testimony you will give
 9 today is the truth, the whole truth, and nothing but the
 10 truth?
 11 THE WITNESS: I do.
 12 JUDGE HOWARD: Thank you.
 13 Ms. DeLappe, would you please introduce
 14 Captain Moore.
 15 MS. DeLAPPE: Thank you.
 16 MICHAEL R. MOORE, witness herein, having been
 17 first duly sworn on oath, was
 18 examined and testified as
 19 follows:
 20
 21 DIRECT EXAMINATION
 22 BY MS. DeLAPPE:
 23 **Q. Captain Moore, if you could please state your**
 24 **full name.**
 25 A. Michael Ray Moore.

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1 **Q. And your employer?**
 2 A. Pacific Merchant Shipping Association.
 3 **Q. And your business address?**
 4 A. 2200 Alaskan Way, Seattle, Washington; that's
 5 Suite 160. Zip code is 98161.
 6 **Q. Thank you.**
 7 **And, as you know, your pre-filed testimony and**
 8 **exhibits have already been accepted into evidence. And**
 9 **are you now adopting those under oath?**
 10 A. Yes, I am.
 11 MS. DeLAPPE: I tender the witness.
 12 JUDGE HOWARD: Mr. Fassburg, you may
 13 proceed.
 14 CROSS-EXAMINATION
 15 BY MR. FASSBURG:
 16 **Q. Good morning, Captain Moore.**
 17 A. Good morning.
 18 **Q. I've got a couple questions for you about some**
 19 **old history now, I suppose.**
 20 **You started your career as a representative of**
 21 **industry with the Puget Sound Steamship Operators**
 22 **Association; is that right?**
 23 A. That's correct.
 24 **Q. What year was that?**
 25 A. 2002.

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1 **Q. What was your position with that particular**
 2 **group?**
 3 A. I was the Executive Director.
 4 **Q. In your position as Executive Director did you**
 5 **ever have the opportunity to engage with or negotiate**
 6 **with Puget Sound Pilots on tariff rates or anything like**
 7 **that?**
 8 A. For the first few years there were no
 9 negotiations. There were meetings to go over
 10 implementation of the MOU to arrive at a joint
 11 recommendation to the Board of Pilot Commission, but
 12 they were not negotiations at that time.
 13 **Q. Okay. But you were personally involved in those**
 14 **discussions during the MOU period prior to the time that**
 15 **their MOU was terminated?**
 16 A. Yes. We would meet and they would present --
 17 they would present the data, and we would all agree to
 18 the data and then we would agree to a joint
 19 recommendation.
 20 **Q. Okay.**
 21 **PSSOA closed its doors so to speak. But I would**
 22 **like to know in your recollection did it merge with PMSA**
 23 **or did PMSA just take over its responsibility?**
 24 A. Yes, that's a great question.
 25 The individual members are voluntary members.

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1 They decide to be a member of the association or not.
 2 And the members were given the opportunity to join PMSA,
 3 become a member, and to provide their fees or dues to
 4 PMSA or -- or not.
 5 And so it wasn't a merger as you might use that
 6 word in the business world. It was an opportunity for
 7 the members to decide to either not be a member of the
 8 association or to join PMSA.
 9 **Q. Okay. Thank you for that clarification.**
 10 **When PMSA assumed that role, did it essentially**
 11 **step into the shoes of PSSOA under the Memorandum of**
 12 **Understanding that had been entered between PSP, Polar**
 13 **Tankers and PSSOA?**
 14 A. There was no formal paperwork or documentation
 15 to that effect. What we did was looked at the MOU, and
 16 in a good-faith effort to continue the -- the MOU, we
 17 continued to meet with Puget Sound Pilots to go over the
 18 numbers to make a joint recommendation.
 19 So I believe the joint recommendation was the
 20 ultimate goal of the MOU. It didn't bind anyone, and it
 21 didn't bind the Board of Pilot Commissions, but that's
 22 what we did?
 23 **Q. Understood.**
 24 **Now, when PSSOA ceased to exist, none of the**
 25 **parties treated the Memorandum of Understanding as if it**

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1 no longer existed. It continued on until it was
 2 terminated; is that right?
 3 A. We engaged in it. According to the terms of
 4 the -- according to the negotiated agreements within the
 5 MOU until it was terminated by PSP.
 6 Q. Okay. And just to be clear. My question was a
 7 little different.
 8 A. Okay.
 9 Q. If the MOU didn't cease to exist with PSSOA, it
 10 continued on and the parties treated it as if it was an
 11 agreement between PSP, Polar Tankers and PMSA starting
 12 at that point; is that right?
 13 A. We realized we were not signatory to the
 14 agreement. PSSOA continued to actually exist. It
 15 didn't shut off its checking account or savings account.
 16 And so although we weren't signatory to it, since I had
 17 met with them the prior couple years and gone over the
 18 numbers, we did the same thing in 2005.
 19 Q. When you were first hired by PMSA, did you
 20 continue to have any relationship with PSSOA in its
 21 continued existence?
 22 A. We had a time period where I was Executive
 23 Director of PSSOA as we were walking through what the
 24 organization PMSA would look like up here in the PNW.
 25 At that time they were just in California. So there

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1 were some over -- overlap in there until such time as I
 2 became an employee of PMSA.
 3 Q. When you became an employee of PMSA, did you
 4 terminate your relationship with PSSOA?
 5 A. Again, they continued to -- the association
 6 continued to exist as an entity, secretary of state and
 7 checking accounts, but I no longer received payment --
 8 payment from PSSOA at that time.
 9 Q. Okay. Did -- did you notify Puget Sound Pilots
 10 that you were now going to be doing the same function --
 11 let me be clear. You personally, Captain Moore, were
 12 going to continue in your role as an industry
 13 representative transitioning from PSSOA to PMSA?
 14 A. I don't recall really formally telling them
 15 that. I do recall them calling when it was time to go
 16 over the numbers, and we agreed to meet and go over the
 17 numbers.
 18 Q. But did you let them know that you were no
 19 longer speaking with them as a representative of a
 20 signatory to the agreement, or did you treat it as if it
 21 were the same as before?
 22 A. Well, I really don't remember having that
 23 discussion. We -- they called and we met. We went over
 24 the numbers. I don't think we had a discussion about
 25 what my formal position was with PMSA or what my formal

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1 position was with PMSA.
 2 Q. I think we can move on just a little bit.
 3 And I may skip around a little bit. I'll try to
 4 let you know where I'm going.
 5 In your pre-filed testimony you talk a little
 6 bit about port competitiveness, and in that discussion
 7 you included a table from I believe Jacobson Pilotage
 8 Service down at Port of Long Beach comparing rates among
 9 various pilotage grounds. Do you recall that testimony?
 10 A. I recall -- I recall including an entire memo
 11 that was given to the Port of Long Beach Commissioners.
 12 And within that memo there was a charter table. It
 13 wasn't independent of the entire memo.
 14 Q. And that's okay. In your testimony I think you
 15 only included one table. I'll direct you to that.
 16 Could you please go -- turn to Exhibit MM -- and I'm
 17 sorry. I probably should have put the right page in
 18 here. Let me see if I can find this real quick.
 19 On page 124. And this would be of MM --
 20 COMMISSIONER RENDAHL: So Mr. Fassburg, this
 21 is Ann Rendahl. Can you hear me?
 22 MR. FASSBURG: I can hear you.
 23 COMMISSIONER RENDAHL: I think we've lost --
 24 I think we've lost some folks. It sort of broke apart
 25 and I see folks coming back on.

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1 So Judge Howard, I think we need to restart
 2 the question.
 3 JUDGE HOWARD: Okay.
 4 Would you mind repeating the question. I'll
 5 admit everyone in the lobby.
 6 MR. FASSBURG: I'd be happy to.
 7 BY MR. FASSBURG:
 8 Q. I was just asking Captain Moore to turn to
 9 Exhibit MM-1Tr on page 124.
 10 A. Yes, I have that.
 11 Q. Okay. In this chart, which I understand you did
 12 not prepare, does it appear to you as though this
 13 comparison of 13,000 TEU containerships is comparing the
 14 rate for service being provided by a Jacobson pilotage
 15 service pilot in Long Beach against a service that would
 16 provided by pilots in various other pilotage districts?
 17 A. So I don't think it represents the rate per se.
 18 It represents the outcome of applying the rate in each
 19 of those ports. And I believe that was the purpose of
 20 Jacobson Pilot Services providing that to the Port of
 21 Long Beach Commissioners.
 22 Q. Thank you for that clarification.
 23 And here, based on the amount of the charge,
 24 does that look like it's representative for Puget Sound
 25 of any kind of one-way, you know, inbound or outbound

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1 assignment?

2 A. That appears to be an arrival and a departure,

3 which is typical of a containership without typically

4 going to anchor.

5 So it is an arrival and a departure; that would

6 be two invoices.

7 **Q. Okay. Now, moving slightly to a different**

8 **topic. If I recall correctly, you testified in your**

9 **cross-answering testimony that you agreed with staff's**

10 **idea of using a usage rate where shipping companies are**

11 **going to pay for pilots based on an hourly service rate.**

12 **Is that right?**

13 A. We definitely support a usage rate.

14 There are different ways to do it. The hourly

15 rate is one of them. UTC staff have that in their

16 proposal, and I believe so did PSP.

17 **Q. Okay. So with respect to a port like the Port**

18 **of Long Beach, would you agree with me that the number**

19 **of hours of service required by a pilot to move a ship**

20 **from sea to the Port of Long Beach would be**

21 **significantly less than the number of hours it would**

22 **take a pilot to move the same 13,000 TEU containership**

23 **from the Strait of Juan de Fuca to the Port of Tacoma.**

24 A. I don't have specific transit data length of

25 time down there, from my time down there. They go a lot

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1 slower there in constricted waterways.

2 I know that PSP provided a comparison of bridge

3 hours per month, and Jacobson had more hours piloting

4 per month than the Puget Sound Pilots.

5 **Q. Are you referring there to the total of**

6 **cumulative hours per month?**

7 A. Yes. That's what PSP presented in the last

8 contested rate hearing.

9 **Q. And what I'm asking about is the amount of time**

10 **required to move a single ship for a single assignment.**

11 **Would you agree with me that the distance from sea to**

12 **berth at the Port of Long Beach is significantly less**

13 **than the distance from the Strait of Juan de Fuca to the**

14 **Port of Tacoma?**

15 A. Yes.

16 **Q. Can 13,000 TEU containerships go fast enough**

17 **within the Puget Sound to make that arrival time the**

18 **same total duration as it might take that ship to go**

19 **from sea to the Port of Long Beach?**

20 A. No. I think they have two hours down there.

21 And you have different lengths to Seattle or different

22 length to Tacoma depending in Puget Sound where you are

23 going.

24 **Q. Okay. So if it is going to take a little bit**

25 **longer for the pilot to move a ship from the Strait of**

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1 **Juan de Fuca to the Port of Seattle or to the Port of**

2 **Tacoma, it would make sense that on a usage rate basis**

3 **the ship is going to pay more for an assignment here in**

4 **Washington; correct?**

5 A. On an hour basis?

6 **Q. Well, on an hour basis is fine with me.**

7 A. Okay. Well, per assignment or per hour; if it's

8 per hour, they would have more hours of pilotage

9 service.

10 **Q. Okay. So if we're trying to figure out based on**

11 **a comparison of rates, what's a fair rate, and we're**

12 **going to charge by the hour. The Port of Long Beach's**

13 **pilots would not necessarily want to compare on an hour**

14 **basis because they don't take nearly as long to move**

15 **their ships, would they?**

16 A. I don't know what they would compare it to. But

17 I do know that their overall cost is much lower. So I

18 don't know what that breaks down to on their hourly

19 rate.

20 **Q. Okay. Now, do you think that a fairer**

21 **comparison with respect to the amount of work a pilot**

22 **does -- a fairer comparison would have been comparing a**

23 **move from sea to the Port of Long Beach versus a zone**

24 **one or harbor shift performed by a Puget Sound Pilot**

25 **from harbor to Port of Seattle or to the Port of Tacoma?**

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1 A. Well, to be fair, that wasn't my comparison.

2 That was -- that was the Port of Long Beach's comparison

3 when they were trying to determine fair and reasonable

4 rates for that port in a competitive port arena.

5 And so I didn't establish that comparison.

6 That's simply the comparison they used because they

7 mentioned other ports, including Puget Sound, in their

8 deliberations.

9 **Q. Well, Captain Moore, you offered the chart in**

10 **your testimony for a purpose.**

11 **Do you agree that it would have been fairer to**

12 **prepare a zone one or harbor shift to their --**

13 A. They -- go ahead.

14 I did offer the chart. It was within the port

15 competitiveness section, and it was simply showing a

16 port that we compete with. Looks at that kind of data

17 when they are establishing their rates. It's really

18 under the context of Port competitiveness, not comparing

19 their specific tariff elements to the tariff elements

20 here.

21 **Q. Sure. Well, my question is still a little bit**

22 **different.**

23 **Do you think it is fairer to compare a zone one**

24 **or harbor shift to their move based on the amount of**

25 **time it takes the pilot to complete the move?**

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1 A. I absolutely do not believe that's a fair
 2 comparison.
 3 **Q. What's the basis of your disagreement?**
 4 A. Having done a lot of pilot -- riding along with
 5 pilots down there, they are in a constricted waterway
 6 the entire time. It's much different than taking a
 7 grain ship from anchor here in Elliott Bay and going to
 8 the dock.
 9 They are making turns in very restricted
 10 waterways with very little overhead between them and the
 11 bridge, and so it's -- it's a much different transit
 12 than a shift here.
 13 **Q. Okay. Now -- now, Captain Moore, let's take**
 14 **this a step further.**
 15 **Why wouldn't it be fair to compare moving a**
 16 **13,000 TEU ship up the Blair Waterway from a harbor**
 17 **shift to the Long Beach pilot's move?**
 18 A. Well, the Blair is the probably closest you
 19 could get to trying to compare. But it is a straight
 20 waterway.
 21 The Long Beach pilots have significant turn when
 22 enter the breakwater and a lot of other turns in there,
 23 which are a little bit more complicated than moving a
 24 big ship through as opposed to a straight waterway of
 25 two miles.

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1 **Q. Now, when you talk about the restricted waterway**
 2 **they have down there at the Port of Long Beach, does it**
 3 **matter in terms of maneuverability of the vessel,**
 4 **whether that's a bigger vessel or a smaller vessel?**
 5 A. Yes. The largest vessels should go into their
 6 back channel. 52 feet of water on each side, it starts
 7 becoming restrictive on the side of the vessel.
 8 **Q. So you think one of the differences -- one of**
 9 **reasons it is not a fair comparison to compare a zone**
 10 **one or a harbor shift to their move is because of the**
 11 **fact that a larger vessel in their waterway has**
 12 **restricted -- restricted waters on each side; is that a**
 13 **fair description of what you're saying?**
 14 A. I would say they're just different complexity of
 15 moves. And they are not -- they are not comparable.
 16 **Q. Okay. And does the complexity of the move in**
 17 **the Port of Long Beach have anything to do with the fact**
 18 **they are moving a large containership into a restricted**
 19 **waterway at all?**
 20 A. Sure.
 21 **Q. And do you think that on that basis that there**
 22 **is a difference -- what do you think that difference**
 23 **should mean?**
 24 A. In terms of operational skills, training?
 25 What -- there's lots of things to compare. Which

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1 difference are you talking about?
 2 **Q. Well, let's start there. What is the difference**
 3 **between operational skill and training, based on that?**
 4 A. The Jacobson pilots go for up to 3,000
 5 assignments before they are fully qualified on any size
 6 ships. 3,000 assignments here represent about 20 years
 7 of piloting.
 8 So right off -- right off the bat there's a lot
 9 of different training going on with respect to what they
 10 do down there before you are allowed to move a big ship
 11 into small places.
 12 **Q. And what does that have to do with the**
 13 **difficulty or skill involved with moving the ship as it**
 14 **pertains to tariff rates?**
 15 A. Well, if the training program is significantly
 16 different and the complexity of the job is different, it
 17 might -- it might impact how they construct their tariff
 18 in different ports. All tariffs are not equal.
 19 **Q. And is it your testimony then that they might**
 20 **consider things like the skill and difficulty of moving**
 21 **a particular ship and establishing their tariff rates?**
 22 A. Do you mean in Long Beach?
 23 **Q. Yes.**
 24 A. Yes, I don't know how they originally came up
 25 with their original tariff. I suspect they looked at --

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1 looked at all that. But I don't know that, because I
 2 was never privy to how they came up with the original
 3 tariff.
 4 **Q. By the way, have you looked at tariffs in**
 5 **pilotage districts other than in Long Beach and in the**
 6 **Puget Sound?**
 7 A. I have looked at tariff outcomes more than I
 8 have specific elements. I have looked at some of the
 9 elements in many pilot grounds. I have not done a
 10 strict comparison of element to element.
 11 **Q. Sure.**
 12 **Can you give us from your memory a list of the**
 13 **places who's pilotage tariffs you have reviewed?**
 14 A. From -- from memory, there's different --
 15 several different pilot districts in Florida and there's
 16 some in the Gulf.
 17 But my most familiar with the west coast ports
 18 were in the Pacific Rim trade. So you can name Columbia
 19 River, Columbia River Bar, Puget Sound, Port Hueneme, of
 20 course, Port of Grays Harbor, LA, Long Beach and San
 21 Diego.
 22 **Q. Based on your review, would it be true that most**
 23 **pilotage districts have tariff rates that consider**
 24 **things like the size of the vessel, whether that be a**
 25 **unit charge or a gross tonnage charge or an LOA?**

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1 A. The size of the vessel, typically tonnage, but
 2 not always tonnage, is an element of the tariffs.
 3 **Q. And would it be true that in quite a few ports**
 4 **the only determinate factor by which vessels are charged**
 5 **is some sort of measurement of size. Again, either a**
 6 **unit charge, a gross tonnage charge or an LOA?**
 7 A. I think if you're going to try and boil it down
 8 to a single, single element being the entire tariff and
 9 you just have one factor in the tariff, I would say no.
 10 Tariffs tend to have many elements to them.
 11 **Q. How about as a primary determinate factor. I**
 12 **mean, as opposed to surcharges and things of that**
 13 **nature, would it be fair that in quite a few pilotage**
 14 **districts the primary determinate factor in rates is the**
 15 **measurement of size?**
 16 A. In many districts, the size of the vessel is
 17 determined by -- different kinds of measurements is a
 18 big factor. In the Great Lakes it's the hours -- it's
 19 the hours they move the ship through different zones.
 20 So again, you have different -- different
 21 approaches and different tariff districts and pilot
 22 districts.
 23 **Q. Sure. I think I heard a yes in there. And**
 24 **that's what I want to make sure I did.**
 25 **Is it true that in quite a few pilotage**

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1 **districts it is the primary determinant?**
 2 A. Well, there is 60, 75 districts in the country.
 3 I don't know all of them. I do know West Coast and
 4 Great Lakes is another one I've looked at, and that is
 5 more of an hourly rate. And others have more of a size
 6 of vessel, mostly tonnage type of deal.
 7 **Q. When you say some of them have a mostly tonnage,**
 8 **are you saying that yes, tonnage is the primary**
 9 **determinant factor in those tariffs?**
 10 A. I haven't done the analysis to determine what
 11 percentage of the tariff revenue is generated by tonnage
 12 exclusively.
 13 **Q. Okay. I think I can move on.**
 14 **In your pre-file testimony, and I'm hoping to**
 15 **move this somewhat quickly through this portion by**
 16 **addressing topics somewhat generally.**
 17 **You talk a little bit about growth in PSP's**
 18 **expenses. And my recollection is you looked at a period**
 19 **of time from 2011 to 2018. Does that sound right?**
 20 A. I think there was 2015 to 2018. I think there
 21 is also a 2011 to 2017 or 2018 in here. Can you call
 22 out the page number of the exhibit?
 23 **Q. I would be happy to. Can you go to Exhibit**
 24 **MM-1Tr, page 31.**
 25 A. Thank you. Page, 31, okay.

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1 Yes, I see that.
 2 **Q. Okay. If you look at your testimony there,**
 3 **starting on page -- I'm sorry, line 9.**
 4 **You testified, "Describe how these essential**
 5 **pilot operating expenses, excluding pilot compensation**
 6 **categories, have historically changed over time in the**
 7 **Puget Sound."**
 8 **"Answer: Apples to apples, annual pilot**
 9 **operating expenses have historically increased**
 10 **relatively very slowly over time. From 2011 to 2018,**
 11 **total pilot costs, including not essential expenses and**
 12 **pilot benefits and deferred compensation have increased**
 13 **from \$10,799,204 to \$12,437,372. The annual average**
 14 **rate of growth of pilot costs over this time period is**
 15 **2.2 percent per year."**
 16 **Did I read that testimony correctly?**
 17 A. Yes, you did.
 18 JUDGE HOWARD: Mr. Fassburg, I'm sorry to
 19 interrupt. Are you using the revised testimony for
 20 that?
 21 MR. FASSBURG: Yes.
 22 JUDGE HOWARD: Okay. You may proceed.
 23 Thank you.
 24 MR. FASSBURG: Thank you.
 25 BY MR. FASSBURG:

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1 **Q. Captain Moore, is it your suggestion by this**
 2 **testimony that in establishing the expenses for the rate**
 3 **year, this Commission should look to the historic**
 4 **average rate of growth of PSP's expenses?**
 5 A. I think the history provides context, but also
 6 in that -- in that paragraph, I listed nonessential, and
 7 compensation categories of benefits as -- I called those
 8 out on purpose because I think those are different
 9 categories you look at.
 10 But historic -- historical trends and averages I
 11 think are instructive and provide context.
 12 **Q. Okay. And again, my question is a little**
 13 **different. And I just want to make sure I have a clear**
 14 **answer.**
 15 **For the rate year, is it your recommendation**
 16 **that this Commission looked to this seven years historic**
 17 **period of growth of expenses to project what Puget Sound**
 18 **Pilots rate year expenses should be in rates?**
 19 A. As I said, it's -- it's instructive, but I have
 20 other testimony on expenses as well.
 21 **Q. Okay. Now, I don't hear an answer to my**
 22 **question, so I'll try it again a little differently.**
 23 **It's my problem sometimes. Maybe that was a bad**
 24 **question.**
 25 **When we're trying to figure out what PSP's**

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1 operating expenses should be in the rate year, should we
 2 be looking at some markup to historic expenses based
 3 upon a seven-year average of expense growth rates?
 4 A. Yes, I think that would be instructive.
 5 Q. Is it your recommendation that the Commission
 6 reject its traditional hybrid test year approach to
 7 projecting expenses for a regulated company?
 8 A. I think the test year could be -- have anomalies
 9 in it that would not necessarily show the trends of
 10 individual expenses that may help the Commission make a
 11 more informed decision.
 12 Q. So I'll -- I'll ask a yes or no and see if I can
 13 get just a yes or no for now.
 14 Is it your recommendation, yes or no, this
 15 Commission should reject its hybrid test year approach
 16 in favor of adjusting test year expenses based upon a
 17 seven-year average rate of growth?
 18 A. I think -- okay. I guess I would say, yes, they
 19 have used five years and other elements, they could use
 20 a five-year trend line here to be instructive.
 21 Q. Okay.
 22 JUDGE HOWARD: Mr. Fassburg, would this be a
 23 good time to stop, or would you like to continue forward
 24 at this time?
 25 This would be a great time.

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1 JUDGE HOWARD: Would the Commissioners be
 2 amenable to a 40-minute lunch break?
 3 COMMISSIONER BALASBAS: Can we make it
 4 45 minutes?
 5 JUDGE HOWARD: We will go off the record and
 6 we will reconvene at 12:45.
 7 (A luncheon recess was taken.
 8 from 12:01 p.m. to 12:48 p.m.)
 9
 10 AFTERNOON SESSION
 11
 12 JUDGE HOWARD: Thank you, everyone. Let's
 13 go back on the record and resume the cross-examination
 14 of Captain Moore.
 15 Mr. Fassburg, you may continue.
 16 MR. FASSBURG: Thank you.
 17 BY MR. FASSBURG:
 18 Q. Captain Moore, we left off with a discussion of
 19 some of your recommendations regarding Puget Sound
 20 Pilots expenses. I've got a few more questions along
 21 those lines.
 22 In your pre-filed testimony Exhibit MM-1Tr, you
 23 wrote that by requesting funding for 61 full-time
 24 equivalent pilots, PSP would overinflate its expenses --
 25 and I'll paraphrase -- but basically, by all of those

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1 variable expenses or in your opinion probably benefits
 2 that would accompany each individual pilot. Do you
 3 recall that testimony?
 4 A. I do.
 5 Q. Is it still your contention that when PSP
 6 calculated this revenue requirement, that for every one
 7 of those 61 FTE pilots PSP asked for funding for
 8 accompanying medical benefits, disability benefits,
 9 et cetera?
 10 A. It wasn't entirely -- I'm getting feedback. You
 11 can still hear me? Okay.
 12 It wasn't entirely clear to me, because there's
 13 a three-year pro forma sheet, and it was -- all the
 14 expenses didn't necessarily make sense as they carried
 15 over through to year two and year three at the same
 16 levels. And so it wasn't really clear if you wanted
 17 funding for 61 pilots what was going to happen on the
 18 expenses such as license fees, medical coverage and so
 19 on.
 20 Q. Okay. I'll ask the question again.
 21 Is it still your contention that PSP is asking
 22 for those expenses times 61 full-time equivalent?
 23 A. I believe it -- I'd have to look at that
 24 testimony. But I think the compensation was asked for.
 25 I don't know that those individual items were asked for

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1 in year one of the burden sheet.
 2 Q. Okay. Maybe we can get to this slightly
 3 differently to make sure I can at least understand your
 4 answer.
 5 A. Okay.
 6 Q. Have you changed your position or are you still
 7 contending that PSP asked for funding times 61 pilots
 8 for each of those expense elements?
 9 A. I believe they asked for -- I believe they asked
 10 for tariff to cover compensation for those pilots, not
 11 necessarily all those items up to 61.
 12 Q. Okay. So I'll try to describe your answer and
 13 see if you agree.
 14 You now believe PSP did not request medical
 15 benefits, disability insurance, license fees, and other
 16 variable expenses that would vary by the number of
 17 pilots for all 61 of the FTE requests?
 18 A. As I originally said, I think it's a little
 19 unclear. Medical expenses are much higher. I'm not
 20 sure how that was calculated. So I can't really answer
 21 that.
 22 Q. So you are neither standing by nor changing your
 23 original testimony, is that what you are saying?
 24 A. I can't -- for example, I cannot explain the
 25 1.7 million in medical that went up, if it wasn't for

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1 new pilots. If that was just because medical coverage
 2 went up, I don't know if it was due to that or if it was
 3 due to adding new pilots. It was unclear to me.
 4 **Q. Did you ask in a data request how those numbers**
 5 **were calculated? PSP's revenue requirement?**
 6 MS. DeLAPPE: Objection, asking the
 7 witness --
 8 MR. FASSBURG: I'll move on a.
 9 MS. DeLAPPE: -- to recall all the data
 10 requests is unreasonable.
 11 JUDGE HOWARD: It sounds like he's moving
 12 on.
 13 BY MR. FASSBURG:
 14 **Q. Captain Moore, I believe in your cross-answering**
 15 **testimony, you contended various things with respect to**
 16 **what audit should be performed of PSP's expenses and**
 17 **business records. Do you recall that testimony?**
 18 A. I do.
 19 **Q. And I think we asked you a data request about**
 20 **this. I can refer you to that. It's Exhibit MM-87X,**
 21 **which is data request 196.**
 22 A. Just a moment. Can you say the number again.
 23 **Q. Exhibit MM-87X, which is Data Request 196.**
 24 A. Yes, I have it.
 25 **Q. Thank you.**

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1 **So to confirm what you testified, you believe**
 2 **staff did not do any audit of PSP's expenses as part of**
 3 **this rate proceeding; is that right?**
 4 A. I believe they did do an audit. They did an
 5 administrative audit as has been described.
 6 We were looking for a performance audit and a
 7 more robust delving into all the expenses on this first
 8 case and -- and that performance audit is different than
 9 the administrative audit.
 10 **Q. Okay. Well, I'll refer you to the questions you**
 11 **asked in Data Request 196 there in Exhibit MM-87X.**
 12 **The question was: "By the testimony in Exhibit**
 13 **MM 42 T, page 32, line 17, to page 33, line 17, does**
 14 **PMSA contend UTC staff did not perform an audit of PSP's**
 15 **expenses as part of this rate proceeding?" And that was**
 16 **question.**
 17 **A. And your answer there was: "Yes, UTC staff**
 18 **testimony does not allege to have completed an audit of**
 19 **PSP's expenses, other than the staff performed a cost**
 20 **study as a component of their construction of a**
 21 **pro forma income statement in order to derive a revenue**
 22 **requirement."**
 23 **Did I read that correctly?**
 24 A. You did.
 25 **Q. That was your response, not someone else's**

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1 **response?**
 2 A. No, that was my response.
 3 **Q. If I understand your testimony here today, this**
 4 **data request was inaccurate -- I'm sorry, this response**
 5 **was inaccurate?**
 6 A. We certainly learned that the UTC staff used the
 7 words "administrative audit," and we used "cost study."
 8 And so I'm absolutely willing to insert, you know,
 9 change that answer to administrative audit as has been
 10 explained to us by UTC staff.
 11 **Q. Okay. At the time that you answered this data**
 12 **request had you confirmed with UTC staff what kind of**
 13 **audit they performed?**
 14 A. No. If I had, I would have used the word
 15 "administrative audit" in the answer.
 16 **Q. Now, then do I understand from your**
 17 **cross-answering testimony, you think the kind of staff**
 18 **audit -- or I'm sorry. Let me rephrase that -- you**
 19 **think by your cross-answering testimony the type of**
 20 **audit staff performs is not adequate to determine**
 21 **whether PSP's operating expenses are reasonable and**
 22 **should be included within PSP's regular expenses. You**
 23 **think something more should be performed?**
 24 A. We most definitely agree on most of the expenses
 25 with UTC's staff review. However, we recommended a

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1 performance audit to get into each and every expense on
 2 this first time through. But we don't have UTC
 3 differences with UTC staff on a majority of the expenses
 4 listed. We just think that all of them need a -- a good
 5 analysis.
 6 **Q. Captain Moore, again, I think I'm asking**
 7 **poorly-worded questions. I'll just try to get a**
 8 **succinct clear yes or no to this one.**
 9 **Do you think staff's audit was inadequate, yes**
 10 **or no?**
 11 A. Yes.
 12 **Q. Let's move on just a little bit.**
 13 **You provided some testimony, quite voluminous**
 14 **testimony I might say, with respect to revenue per**
 15 **assignment and revenue per vessel move. I don't want to**
 16 **go through all of that, but I do want to ask you a few**
 17 **questions.**
 18 **Would you agree with me that the reason why the**
 19 **average revenue per vessel move or the average revenue**
 20 **for vessel assignment could grow over the time is simply**
 21 **because the ships that call in the Puget Sound are**
 22 **different and the ones that are calling for larger?**
 23 A. Yes. I would agree with that.
 24 **Q. And do you think there's any other component**
 25 **that would cause that change?**

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1 A. It's the mix -- it's the mix across the whole
 2 spectrum of assignments. And size due to the tonnage
 3 charges generated more revenue. So, yes, that mix and
 4 volume of type of ships would affect revenue -- average
 5 revenue per assignment.
 6 **Q. Okay. Now -- and I should have been clear. I**
 7 **meant in isolation, not including tariff increases,**
 8 **because that's another factor that would increase the**
 9 **average revenue per assignment; correct?**
 10 A. Yes, that's -- that's correct.
 11 **Q. Okay. Thank you.**
 12 **Now, I think you testified earlier that skill is**
 13 **a factor that should be considered in comparing tariff**
 14 **charges. I want to make sure I understand your concern**
 15 **here.**
 16 **When a larger shift calls on a waterway, do you**
 17 **agree or disagree that for a Puget Sound Pilot as**
 18 **respect to a Long Beach pilot, the more skill would be**
 19 **required to pilot that ship?**
 20 A. Yes, I do. More experience for sure. And I
 21 totally support the gradation of vices from year one to
 22 year five.
 23 **Q. Okay. But just to be clear. A larger -- your**
 24 **opinion as to Puget Sound Pilots is also that a larger**
 25 **ship does require more skill?**

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1 A. Yes. In Puget Sound compared relatively to
 2 Puget Sound, a larger ship versus a smaller ship, yes.
 3 **Q. Thank you?**
 4 A. Yes.
 5 **Q. By the way, I didn't ask you this, but I meant**
 6 **to. You do agree that ships should be required to hire**
 7 **pilots; correct?**
 8 A. I'm confused by the question. You mean any
 9 ship? Yes, of course, it is compulsory. They have to
 10 hire a pilot.
 11 **Q. Sure. Well, I'm not asking whether or not**
 12 **they're legally required. Don't you agree that it's**
 13 **safer. It reduces the risk of an alleged grounding or**
 14 **some other major incident to have a pilot aboard a ship**
 15 **when it is in interstate waters?**
 16 A. Absolutely. Pilotage is a core component of
 17 risk reduction, along with many other factors.
 18 **Q. Thank you.**
 19 **Now, you in your discussion of average revenue**
 20 **per assignment pointed out, of course, the larger ships**
 21 **that are coming here increase the average revenue per**
 22 **assignment because of the size.**
 23 **And you included in Exhibit MM-1Tr at page 20,**
 24 **lines 20 to 26 in testimony I would like to ask you**
 25 **about.**

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1 A. Okay. Just -- just a moment. Okay, which lines
 2 again?
 3 **Q. Lines 20 to 26.**
 4 (Audio disruption.)
 5 MR. FASSBURG: I'm sorry? I said Page 20.
 6 Let me see if I can find where this goes.
 7 The page I was referring to the discussion
 8 of that Alpha-liner article. Usually we can find that.
 9 JUDGE HOWARD: Mr. Fassburg, I have that on
 10 page 21 of the revised testimony.
 11 MR. FASSBURG: Thank you.
 12 THE WITNESS: In ours it went to 22. Oh, I
 13 see the chart. Isn't he referring to the chart?
 14 MR. FASSBURG: Yes, thank you.
 15 THE WITNESS: Okay. I have it now.
 16 BY MR. FASSBURG:
 17 **Q. And actually, there was some testimony that**
 18 **accompanied the chart that is really what I was looking**
 19 **for. I just knew this was the place. So let me make**
 20 **sure I give you the right page and line for your**
 21 **testimony.**
 22 A. Thank you.
 23 **Q. This actually was on page 20. I was just off a**
 24 **line page on my PDF. So now that we're on hopefully the**
 25 **right page, page 20, starting on line 20.**

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1 **You testified: Do you believe that the average**
 2 **revenue per vessel call will continue to increase under**
 3 **the current tariff without any changes or increase in**
 4 **the rates?**
 5 **Answer: Yes. There is no reason to believe**
 6 **that the historic global trend of the average size of**
 7 **vessels continuously and steadily getting larger will**
 8 **not continue, and we expect that the average size of**
 9 **vessels continuously and steadily calling in the Puget**
 10 **Sound will continue to get larger as well, due to the**
 11 **current structure that has naturally continually**
 12 **increases in average revenue vessel move.**
 13 **Did I read that right?**
 14 A. Yes, you did.
 15 **Q. Okay. Thank you.**
 16 **Now, is there a way to determine which new**
 17 **larger vessels will call on the Puget Sound in the**
 18 **future?**
 19 A. That really gets into port competition. There
 20 are a couple of things going on, and I probably should
 21 have used the descriptor containership or cruise ship.
 22 Those are the two types of ships that are getting
 23 bigger.
 24 In the container business there's an intense
 25 port competition. And so when you are talking Prince

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1 Rupert or Vancouver or the Bay area or Puget Sound or
 2 LA, Long Beach, or even down to Panama Canal, they are
 3 competing for those vessels.
 4 And as a whole, the container sector average
 5 size of vessel is getting bigger. So one would expect
 6 if we compete well we will -- we will get bigger ships
 7 as well.
 8 **Q. And again, I probably asked my question poorly.**
 9 **See if I can ask it differently this time.**
 10 **Mathematically, is there a way to project the growth in**
 11 **ships?**
 12 A. There's a worldwide trend in the growth of
 13 ships. How many of those will call here is maybe a
 14 little tricker proposition.
 15 **Q. That would be a bit of speculation for us to**
 16 **guess as to which ones will call here; correct?**
 17 A. Which ones? Yes, it would be a guess, yes, as
 18 to -- what -- but that's different than saying will the
 19 trend get bigger. That's hard -- that's harder to say
 20 which vessels for sure.
 21 **Q. Sure. And even for the companies that already**
 22 **have terminal leases here and that are operating here,**
 23 **if they announce what vessels they are building, they**
 24 **certainly haven't announced which of those will call**
 25 **here in the Puget Sound, have they?**

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1 A. No, they have not.
 2 **Q. And we don't have any projections as to**
 3 **container strings or anything like that that far in the**
 4 **future either, do we?**
 5 A. Let me correct myself little bit there if it is
 6 okay.
 7 The Jones Act vessels have announced; and that's
 8 the ones in coastal traffic with the Hawaii and State of
 9 Alaska, they have announced their vessels. But the
 10 international ones I believe you're referring to, they
 11 have not announced a specific vessel here.
 12 **Q. Okay. But even the Jones Act American flag**
 13 **vessel, they don't announce their strings in advance,**
 14 **you know, a year in advance, do they?**
 15 A. Toyota has been very consistent for a long, long
 16 time on their string. It is weekly service to and from
 17 Alaska, Anchorage.
 18 Matson has made some changes recently, and made
 19 some changes that are not as predictable as Tote.
 20 **Q. Okay. Now, you're referring to historic trends.**
 21 **I just mean, do they announce what container strings**
 22 **they are actually going to have a year in advance?**
 23 A. I can't answer the question. But I believe
 24 Toyota and Matson have a pretty good projection because
 25 the population they serve count on them -- count on that

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1 service for their supplies. So those are probably
 2 different than the others.
 3 **Q. Just to be clear. In this you haven't offered a**
 4 **projection of what vessels will arrive in Puget Sound at**
 5 **any point, have you?**
 6 A. No, I have not.
 7 **Q. Now --**
 8 A. You mean specific vessels, like the name of the
 9 vessel is that what you mean.
 10 **Q. Well, you haven't -- just to be clear. You**
 11 **haven't included in the record any projection of what**
 12 **vessels will be calling on the Puget Sound in the**
 13 **future, period, have you?**
 14 A. No, I have not.
 15 **Q. Okay.**
 16 **I would like to ask you a question or two about**
 17 **your Exhibit MM-8R.**
 18 A. Exhibit, is this the Alpha-liner Exhibit?
 19 **Q. Yes. That's the one, Captain Moore.**
 20 A. Okay, I have it.
 21 **Q. Very good.**
 22 **Now, in this article they are talking about the**
 23 **world's containerships at least in the visual depiction**
 24 **here. These ships, the biggest ones start at 22,960**
 25 **TEUs, and it goes all the way down to a little bit over**

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1 **18,340 TEUs. Is that right?**
 2 A. That -- that particular page, yes. That's
 3 right.
 4 **Q. Yeah.**
 5 **In your knowledge, what is the largest TEU of a**
 6 **containership that has ever called on the Puget Sound?**
 7 A. That was the Benjamin Franklin, the CMA CGM
 8 Benjamin Franklin.
 9 **Q. How many times did the Benjamin Franklin call**
 10 **(audio disruption)?**
 11 A. It was a test run to see if the facilities could
 12 handle it. And so the company hasn't made further
 13 announcements on size of vessel calling here, but they
 14 wanted to test that size vessel out here.
 15 **Q. And -- and how many times did it call here?**
 16 A. One time.
 17 **Q. How many TEUs was that vessel?**
 18 A. I believe it was 18 -- just over 18,000 TEUs.
 19 **Q. In your knowledge, has any ship over 18,000 TEUs**
 20 **called on the Puget Sound more than one time?**
 21 A. No.
 22 **Q. What is the largest ship -- largest**
 23 **containership by TEUs that regularly calls on the Puget**
 24 **Sound?**
 25 A. I believe Evergreen down in Pierce County

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1 terminal has announced 14,000 TEU vessel, 13,800 to
 2 14,000 TEU vessel. I believe that's the largest string
 3 announcement.
 4 **Q. Okay. And in your knowledge there aren't any**
 5 **larger vessels than that that regularly call on the**
 6 **Puget Sound, right?**
 7 A. No. They haven't called here. I know that the
 8 Northwest Seaport Alliance is -- and Capital Investment
 9 is out trying to track them, but none of them called
 10 here yet, other than the Benjamin Franklin.
 11 **Q. Okay. With respect to capacity -- actually, let**
 12 **me start from somewhere else.**
 13 **The pandemic is obviously affected the -- the**
 14 **amount of cargo volume that's being transported on each**
 15 **ship; correct?**
 16 A. Could you state that question again.
 17 **Q. Yeah. And it may be poorly worded, but**
 18 **hopefully I'll word it well enough you understand me.**
 19 **As a result of the pandemic, these**
 20 **containerships haven't been at maximum capacity; is that**
 21 **right?**
 22 A. Well, on the contrary. They have taken vessels
 23 out of string. And so all vessels would love to be at
 24 capacity and offload their entire cargo and then on-load
 25 their entire cargo, which is not the pattern; although,

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1 it happened twice in Long Beach during the pandemic,
 2 which is interesting. That means coming over,
 3 offloading everything and on-loading everything.
 4 And so when they take vessels out of the stream,
 5 they are doing that to increase the load factors on the
 6 vessels that are actually in service.
 7 So -- it requires them taking vessels out of
 8 string do that though.
 9 **Q. And actually, that's an interesting topic I**
 10 **would like to revisit. But -- with respect to, I guess,**
 11 **global trade. Haven't some of the shipping companies**
 12 **reconsidered whether, due to these capacity issues, it's**
 13 **really all that smart to have huge 20,000 plus TEU**
 14 **containerships?**
 15 A. I believe it's true that their retirement on the
 16 debt for investing in those ships changes -- the
 17 dynamics have changed with COVID. And so how they
 18 deploy them and where they are going to deploy them,
 19 each company is going to have to make that decision.
 20 It probably would lead to retirement of older
 21 vessels faster and deployment of the new vessels in
 22 strings that make the most sense.
 23 **Q. Sure. And just to be clear. Some of the**
 24 **strings that make the most sense based on what some of**
 25 **the shipping companies were thinking is that they will**

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1 **be more flexible if they use smaller containerships as**
 2 **opposed to the big 20,000 or 18,000 TEU containerships.**
 3 A. It is a very interesting question that you ask.
 4 The Panama Canal can now handle a 14,000 TEU vessel.
 5 And so some of the carriers are looking at well, if I
 6 can use a 14 in the Panama Canal and I can call the Gulf
 7 Coast, East Coast, West Coast, I have more flexibility.
 8 The larger -- to get at your question. The
 9 larger vessels are pretty much destined for the Asia to
 10 Europe trade.
 11 **Q. Now, about that capacity issue, I would like to**
 12 **get back to that, because I think you had a good point**
 13 **that I would like to ask you about.**
 14 **In order to maximize the rates the shipping**
 15 **companies can charge, they reduce the number of sailings**
 16 **to maximize the load on each ship; is that right?**
 17 A. Well, it makes no sense for them to operate a
 18 larger number of vessels that are partially loaded as
 19 opposed to reducing that number of vessels. That's --
 20 they are just making logical rational choices about how
 21 to deploy their cap -- their capital and their assets.
 22 **Q. Sure. So if due to the pandemic they weren't**
 23 **reaching maximum capacity or even profitable low**
 24 **capacity on ships, they started canceling sailings, and**
 25 **that stabilized the market rate for shipping costs,**

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1 **aren't these shipping companies restoring their**
 2 **profitability at the same time?**
 3 A. Well, they still have the debt retirement on all
 4 the crews and all the ships that they take out of
 5 service. So I don't think profits a real common term
 6 right now with the Ocean carriers.
 7 **Q. Okay. I'll move on.**
 8 **You talked in some of your pre-file testimony**
 9 **about what the BPC tariff does and does not know. And I**
 10 **don't want to go through all of it, but I do want to ask**
 11 **you a little bit about that.**
 12 **The -- you would agree with me, first of all,**
 13 **that outside of the MOU in years prior, the Board of**
 14 **Pilotage Commissioners has adopted all of its tariff**
 15 **rulings, so to speak, in what we call black box; is that**
 16 **right?**
 17 A. Yes. They never articulated all the specific
 18 reasons behind their decisions. That's -- that's
 19 correct.
 20 **Q. Okay. Now, would you agree with me that**
 21 **starting in 2005 and going backwards in time from there,**
 22 **that rates were typically set based upon a number of**
 23 **pilots and a target net income by which that pilot would**
 24 **be multiplied in determining the amount of revenue the**
 25 **tariff should generate?**

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1 A. Well, it's totally fair for you to call out
 2 those two metrics, but there were many other metrics
 3 involved in the memorandum of understanding, which of
 4 course, did not bind the Board of Pilotage Commissioners
 5 to take any particular tariff outcome. But it did bind
 6 the participants into a joint recommendation. And those
 7 two elements you just mentioned were -- were key parts
 8 of that. But there were others, too.

9 **Q. Okay. And -- have you ever reviewed any**
 10 **decisions of the Board of Pilotage Commissioners prior**
 11 **to 1996?**

12 A. I have -- prior to 1996, prior to the MOU, I
 13 have reviewed minutes of some of the meetings and some
 14 of the discussions and some statements by the Chair, I
 15 think his name was Vognal (phonetic) back then, as they
 16 marched towards the MOU year.

17 So I've read -- I've read some of the minutes of
 18 those meeting. Some of them might been in a tariff
 19 hearing and some of them might have been just their
 20 regular reading.

21 **Q. Would you agree with me that prior to 1996 the**
 22 **Board of Pilotage Commissioners also determined part of**
 23 **the tariff revenue by multiplying a number of pilots by**
 24 **a target net income.**

25 A. I really can't speak to that. Because if you go

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1 to before '96 you are going to go back to the inception
 2 of Puget Sound Pilots. And I haven't looked at that
 3 entire record and all the elements that they considered,
 4 so I couldn't really answer that specifically.

5 I -- I do know that leading up to the MOU,
 6 target net income, workloads and so forth were
 7 discussed. And even in the '80s, when they were doing
 8 178 assignments each, that the workload was a
 9 significant part of the discussion.

10 **Q. So rather than trying to characterize the entire**
 11 **period before '96, would you agree with me at least in**
 12 **the '80s and 1995, the number of pilots and the target**
 13 **net income were specifically mentioned as factors in**
 14 **establishing rates by the Board of Pilotage**
 15 **Commissioners?**

16 A. Again, I don't know all of those. I did read, I
 17 think I put in the Exhibit list, a 1983. I put that in
 18 there. And so I've read the Exhibits you have in my
 19 cross exhibit, and again, workload, like 178
 20 assignments, a cap on benefit, revenue and so forth were
 21 all part of that. I think to isolate just two elements
 22 would be to dismiss all the rest of them.

23 But I don't know each and every year. I just
 24 know the one in my cross exhibit list.

25 **Q. Let me just ask about those, some of those, make**

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1 **it easy. Would you mind going to Exhibit MM-64X.**

2 A. MM-64X, okay.

3 **Q. And if you turn down to page 3. Are you there**
 4 **yet?**

5 A. I am on page 3, yes.

6 **Q. I'm not sure if my file version -- I had my own**
 7 **highlight. Do you see a highlight there on page 3?**

8 A. I don't.

9 **Q. That's fine.**

10 A. I can find what you want. What do you want me
 11 to look at?

12 **Q. Well, about halfway through the paragraph that**
 13 **starts, consideration of the Puget Sound tariff hearing.**

14 A. I see it.

15 **Q. Okay. And I'll -- I'll just read you the**
 16 **sentence I'm looking for.**

17 **It was moved by Commissioner Richmond and**
 18 **seconded by Commissioner Sheerer (phonetic) that the**
 19 **tariff shall be based on a total of 48 pilots, because**
 20 **the accepted annual total number of projected**
 21 **assignments of 8,399 divided by a workload of 178 equals**
 22 **48 pilots. The motion carried with a vote of five in**
 23 **favor of, two opposed.**

24 **It was moved by Commissioner Sheerer and**
 25 **seconded by Commissioner Ellis (phonetic) that the**

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1 **targeted net income for 1988 not change from last year**
 2 **and shall remain at 105,425. An amended motion was made**
 3 **by Commissioner Admeed (phonetic) and seconded by**
 4 **Commissioner Lavell (phonetic) that the targeted net**
 5 **income was set at 109,000 for 1988. The amended motion**
 6 **prevailed with a vote that remained in favor. The**
 7 **original carried with a vote of four in favor and three**
 8 **opposed.**

9 **Did I read that correctly?**

10 A. Looks like you did.

11 **Q. So I'm sure we can both agree, at least with**
 12 **respect to 1987 and '88, that that particular tariff**
 13 **hearing occurred over a couple of days, the Board of**
 14 **Pilotage Commissioners expressly considered funding in**
 15 **the tariff revenue a particular number of pilots**
 16 **calculated by dividing vessel projection numbers by**
 17 **workload numbers to equal number of pilots, multiplied**
 18 **by a target net income?**

19 A. It certainly appears that's exactly what they
 20 did in this paragraph.

21 **Q. Okay. Would it be possible for you to agree**
 22 **that they did something similar in 1995 without**
 23 **reviewing those minutes?**

24 A. Well, I do know the MOU years, and are you
 25 talking about the year before the MOU?

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1 **Q. Yeah.**
 2 A. The first year of the MOU.
 3 **Q. I believe, sir, the MOU was 1996. Why don't we**
 4 **do -- I'll make it easier. I don't want to get you**
 5 **confused. Exhibit MM-77X.**
 6 **JUDGE HOWARD: I'm sorry. Mr. Fassburg, I**
 7 **hear that the court reporter is asking for a slight**
 8 **break. So I did not want to interrupt your question,**
 9 **but let's give her a moment just to check on the --**
 10 (A pause in the proceedings.)
 11 **JUDGE HOWARD: Let's go back on the record,**
 12 **and we'll just go a little bit slower if possible. You**
 13 **may proceed.**
 14 **BY MR. FASSBURG:**
 15 **Q. Thank you.**
 16 **So Captain Moore, were you able to pull up**
 17 **Exhibit MM-77X while we were off the record?**
 18 A. Yes.
 19 **Q. If you will look for on page 1, where it says**
 20 **"regular meeting." And you found that spot?**
 21 A. I have.
 22 **Q. And I'll read to you the first paragraph after**
 23 **that first couple sentences or the first sentence. It**
 24 **states, "Consideration of proceeding hearing, WAC**
 25 **96-116-300. Following the Board's review and**

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1 **consideration of all written and oral testimony, it was**
 2 **determined that the target net income be set at \$148,535**
 3 **per pilot, and that number of funded pilots be set at**
 4 **53, which includes one non-piloting president."**
 5 **Did I read that correctly?**
 6 A. Yes, you did.
 7 **Q. Okay. And of course, this document is the**
 8 **minutes -- this is the minutes from the 1995 hearing of**
 9 **the Board of Pilotage Commissioners on May 18th, 1995.**
 10 **Do you have any reason to doubt that occurred before the**
 11 **MOU in 1996?**
 12 A. No, I have no reason to doubt that, no.
 13 **Q. Okay. In your investigation of historic rate**
 14 **setting practices of the BPC, whatever that may entail,**
 15 **have you found any examples of rate setting hearings**
 16 **that occurred before 1996 in which the BPC did not use a**
 17 **number of pilots in a target net income to establish**
 18 **rates?**
 19 A. I haven't really looked at all of those, so I'd
 20 have to say I have no reason, because I haven't really
 21 looked at them. But I did look at your 1983 and your
 22 1987 and '88 and 1995 one.
 23 **Q. Okay. By the way, in -- in any of those, did**
 24 **you see any consideration of what the Columbia River**
 25 **pilots were getting paid as a comparison for what Puget**

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1 **Sound Pilots maybe should get paid?**
 2 A. In the three I just mentioned, I don't -- if it
 3 was mentioned it must have been buried in another page.
 4 I didn't see it in the tariff. I don't know. I just
 5 don't know. I didn't see in the paragraphs or sentences
 6 you read.
 7 **Q. Okay. Why don't you go to Exhibit MM-98X.**
 8 A. Okay.
 9 **Q. Have you found it?**
 10 A. Yep.
 11 **Q. Okay. And actually, I apologize. This**
 12 **didn't -- take me just a second. This one is 25 pages,**
 13 **so little -- little more tricky to find where I'm**
 14 **looking.**
 15 **Have you seen this document before, by the way?**
 16 A. Yeah, I have. It's different than the minutes.
 17 That summarize the hearing? It seems like it's just a
 18 straight transcript.
 19 **Q. Yeah. Were you aware that at one point in the**
 20 **past the pilotage Commissioners prepared an abstract of**
 21 **their minutes?**
 22 A. The former Executive Director told me she used
 23 to have to transcribe the hearings, but I haven't really
 24 studied those.
 25 **Q. Okay.**

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1 A. I think that's what this is.
 2 **Q. I think it is. Have you seen this before today?**
 3 A. I know it was in your cross Exhibit list. I
 4 can't say that I read every line in it. I just looked
 5 at it and said okay, looks like a transcript of a
 6 hearing or something.
 7 **Q. Understood. And let me ask you slightly**
 8 **differently so I -- I make sure I understand. Other**
 9 **than when we provided it as a cross exhibit, had you**
 10 **seen this document before today?**
 11 A. I don't -- I don't recall seeing it. We have a
 12 lot of files on pilotage, but I don't recall seeing this
 13 particular document.
 14 **Q. Okay. I'm having a little bit of difficulty**
 15 **with that document, I'm sorry. I will see if I can't**
 16 **hurry this along, but I believe I have the right**
 17 **document. It's possible that I don't. Unfortunately,**
 18 **like you, I probably have too many documents.**
 19 **Okay. There it -- if you will go to the page**
 20 **that is number 10 of this document.**
 21 A. Yes, I'm on page 10.
 22 **Q. Okay. And this appears to be a discussion**
 23 **between Commissioners Sheerer, Lavell, and Richmond.**
 24 **And if you will look down towards the bottom of the page**
 25 **you will see where the second to last statement is by**

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1 **Commissioner Richmond. Have you found that?**
 2 A. Yes.
 3 **Q. Okay. It states [as read]: Commissioner**
 4 **Richmond says one reason we did it, we added 9,000 to**
 5 **the income, what we felt they should have had had for a**
 6 **net income; that is, we did -- that is what we did, and**
 7 **we do it every year.**
 8 **Commissioner Lavell: The fact remaining now is**
 9 **that the compensation level, the \$105,425 is within**
 10 **reason of the compensation level of a pilot in the**
 11 **Columbia Riv -- I think that probably was a typo, the**
 12 **Columbia River. It is 107,000 or whatever, and in**
 13 **Alaska it is 180,000 or 200,000 or whatever. On these**
 14 **pilotage grounds \$105,425 is a basic general**
 15 **compensation level for a pilot.**
 16 **Did it sound like they were talking about**
 17 **whether reasonable income for a pilot can be considered**
 18 **in the context of what other pilots are paid?**
 19 A. Well -- well, for context, Commissioner Lavell
 20 was a pilot, Puget Sound Pilot, and was making a point.
 21 And I've interacted with him quite often. So obviously,
 22 he had a point he wanted to make in that comment. I
 23 don't know what the rest of the Commissioners were
 24 thinking.
 25 **Q. Sure. Well, Commissioner Lavell is not here to**

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1 **testify. I certainly appreciate you commenting on what**
 2 **his thinking is, but that's not in the document.**
 3 A. I don't know what his thinking was. I just --
 4 I've interacted with him so I'm familiar with him. And
 5 I can only read the words that he stated here.
 6 **Q. Okay. I think I can move on.**
 7 **I believe you generally characterized in your**
 8 **pre-filed testimony that the BPC's current tariff does**
 9 **not fund a number of pilots; is that right?**
 10 A. I think we have a slightly different way to
 11 describe funding the number of pilots. They set a
 12 tariff and they never specified all the reasons why.
 13 So if you set a tariff, it generates a certain
 14 amount of revenue depending on the ship traffic, and
 15 part of what that does is go to compensation. So it
 16 wasn't set based on one or two or three inputs if they
 17 set an overall tariff.
 18 On occasion, they would say this should give you
 19 enough money for purchasing portable pilot units or
 20 something. Most of the time they just set the tariff
 21 and then it just got implemented.
 22 **Q. But PMSA's tariff proposal to the Board of**
 23 **Pilotage Commissioners never ignored generating enough**
 24 **revenue under the tariff to fund the number of licensed**
 25 **pilots in the Puget Sound, did it?**

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1 A. I -- I don't believe we predicated our
 2 recommendations exclusively on -- on that.
 3 And there's a difference between the number of
 4 authorized licensed slots and the actual number of
 5 pilots.
 6 So we made recommendations on tariffs, but I
 7 don't recall making a specific recommendation based
 8 specifically on that.
 9 **Q. Well, in (audio disruption) it would violate the**
 10 **Board of Pilotage Commissioners rules with respect to**
 11 **tariffs by interested parties would it?**
 12 A. I'm not sure I understand the question.
 13 **Q. You do understand the Board of Pilotage**
 14 **Commissioners had rules with respect to what should be**
 15 **included within an interested party tariff proposal;**
 16 **correct?**
 17 A. I don't -- I don't really recall any real limits
 18 on what we -- what we could submit or not submit. It's
 19 pretty wide latitude about the things that I've seen
 20 presented there.
 21 **Q. And you've represented industry tariff hearings**
 22 **at the Board of Pilotage Commissioners for 17 years,**
 23 **haven't you?**
 24 A. I have. And I've requested them to articulate
 25 the specific metrics that they were concerned with and

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1 that didn't happen.
 2 Part of the reason we talk about black box
 3 is because they didn't specify which metrics are most
 4 relevant to you, in which case we would have tailored
 5 our recommendations accordingly.
 6 **Q. In 17 years of representing industry with the**
 7 **Board of Pilotage Commissioners, surely you have read**
 8 **the rules with respect to what's required of an**
 9 **interested party tariff submission though?**
 10 A. There's a -- so I am totally not familiar with a
 11 legal requirement about what we could submit or not
 12 submit in terms of our -- our tariff proposal.
 13 **Q. Okay. So if I understand your answer. In the**
 14 **17 years you've represented industry opposing pilotage**
 15 **tariff at the Board of Pilotage Commissioners, you did**
 16 **not read WAC 363-116-175?**
 17 A. No, I certainly did.
 18 I also asked the Board of Pilot Commissioners
 19 what information do you want us to include in our tariff
 20 recommendations to help you to make an informed
 21 decision. I'm on record asking that multiple years.
 22 **Q. Well, why don't we go to that Exhibit so we can**
 23 **just find out if this is something you've read or not.**
 24 **This is Exhibit MM-60X.**
 25 **Are you there yet?**

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1 A. Getting there. I'm there.

2 **Q. So this is a copy of the current rule WAC**

3 **363-116-175 regarding tariff proposal. Have you read**

4 **this rule before?**

5 A. Yes, I have.

6 **Q. And you're aware that it says, in part at least,**

7 **"It shall be the policy that licensed pilot ship**

8 **operators and interested members of the public may**

9 **jointly or separately present tariff proposals to the**

10 **Board for its consideration. Any such proposal shall**

11 **endeavor to provide that the tariff at all times fund**

12 **the training program and the number of pilots licensed**

13 **by the board."**

14 **Did I read that?**

15 A. Yes, you did.

16 **Q. And you were aware of this at all times that you**

17 **represented industry before the Board of Pilotage**

18 **Commissioners; correct?**

19 A. I never took that to be a -- a prescription on

20 what you could submit or not submit. It merely -- it

21 merely articulates those elements of -- that they would

22 like to see in a proposal. But it was never limiting

23 and it wasn't prescriptive as to what you could or could

24 not submit.

25 **Q. Is it your testimony here today that you ignored**

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1 **this language and assumed it did not apply to industry?**

2 (Audio disruption.)

3 MS. DeLAPPE: Thank you. I'm double muted.

4 So for the court reporter's benefit. Thank you very

5 much. I was just objecting because I feel that this

6 line of questioning is engaging in a legal argumentation

7 with the witness.

8 MR. FASSBURG: My response to that is

9 Captain Moore wrote in his pre-file testimony many pages

10 on the subject of what rates -- or I'm sorry, what

11 standards should be applied as a legal matter to

12 determining what a tariff should fund.

13 MS. DeLAPPE: And may I be a little more

14 precise.

15 I do not believe that WAC 363-116-175 and

16 the Board of Pilotage Commissioners rules for -- for

17 what should have been jointly or separately presented

18 before their -- that body is relevant, and the legal

19 interpretation is -- I don't understand the point of

20 that here with this witness.

21 MR. FASSBURG: Captain Moore provided

22 extensive testimony on the subject matter of the current

23 tariff which was adopted by the Board of Pilotage

24 Commissioners under the standard.

25 JUDGE HOWARD: I will allow the question.

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1 Of course, this WAC is not necessarily central issue in

2 this case. But I will allow the question.

3 You may restate it.

4 Will you read it back?

5 (Reporter read the question.)

6 THE WITNESS: So am I up now?

7 JUDGE HOWARD: Yes.

8 THE WITNESS: No, I've read the language,

9 and I've seen a number of presentations at the Board. I

10 have never heard the Board Chair Dudley or Chair Tonn

11 ever talk to anybody providing input there, including

12 port representatives, which include the president and

13 Executive Director of Puget Sound Pilots forcing them

14 into just these two -- these two areas or to cover these

15 two areas.

16 So all I can tell you is I'm aware of this.

17 And I'm also very much aware of all the data and

18 information presented there, including from Port

19 authorities, ourselves and the pilots.

20 BY MR. FASSBURG:

21 **Q. So, Captain Moore, I'm having trouble, but I**

22 **will just see if I can try this one more way.**

23 **Is it your testimony that tariff proposals did**

24 **not endeavor to provide that the tariff at all times**

25 **fund the training program and the number of pilots**

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1 **licensed by the board?**

2 A. I would have to -- I would have to look at all

3 of our tariffs, and I believe we covered workload and we

4 covered the training -- training program. We never

5 really took anything -- any other issue other than

6 supporting the training program in full at all times.

7 So I don't know what would be in question in any of our

8 submittals.

9 **Q. I'll move on just a little.**

10 **Captain Moore, since 2005 -- and let me ask**

11 **since 2006 has PMSA ever supported general rate increase**

12 **for Puget Sound Pilots?**

13 A. Yes.

14 **Q. In what year?**

15 A. In the last year of the MOU it called for a

16 reduction in the tariff of 2.79 percent across the board

17 reduction.

18 PMSA proposed a plus-5 percent, which made a

19 differential to the MOU of 7 -- 7.79 percent. That was

20 actually adopted. That was our proposal.

21 **Q. In what year was that?**

22 A. 2005. The last year of the MOU.

23 **Q. I'll repeat my question. Since 2006, has PMSA**

24 **ever supported a general rate increase for Puget Sound**

25 **Pilots?**

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1 A. A general rate increase is across the board. We
 2 supported increases of several elements in -- in concert
 3 with PSP in adjusting the tariff. Some went down and
 4 some went up, and some of those elements, like the boat
 5 charge went up significantly.

6 So yes, there were certain elements of the
 7 tariff that we supported increases in.

8 **Q. Okay. Based on the answer you gave, I think you**
 9 **understood my question, so I'll ask it again. Did PMSA**
 10 **ever support a general rate increase since 2006?**

11 A. No, there was not -- there was not an across the
 12 board -- it the wasn't an across the board decision at
 13 all times. But in those cases when there was across the
 14 board decision, we did not support an increase.

15 **Q. I'm asking about what you were supporting,**
 16 **though.**

17 **So just to be clear. Since 2006, PMSA has not**
 18 **even one time supported a general rate increase for**
 19 **Puget Sound Pilots?**

20 A. If you are defining general rate increases
 21 across the board all elements, no.

22 **Q. In the years that PMSA did support any rate**
 23 **increase, were those considered revenue neutral?**

24 A. Yes. We made -- we negotiated the PSP and some
 25 revenue neutral adjustments to the tariff, that's

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1 correct.

2 **Q. Now, PMSA represents industry in San Francisco**
 3 **and California as well, does it not?**

4 A. Yes, that's correct.

5 **Q. I -- have you similarly opposed every pilot rate**
 6 **increase requested by the San Francisco bar pilots?**

7 A. I am -- I'm not participating directly in those.
 8 I was a witness there in 2010, but I don't directly
 9 participate in the San Francisco rate process.

10 **Q. Well, let me ask about PMSA. Has PMSA supported**
 11 **the rate increase for the pilots, the San Francisco bar**
 12 **pilots since 2005?**

13 A. I -- I don't know what our history is with San
 14 Francisco bar pilots entirely. I know some of it, but I
 15 don't have a year-by-year breakdown of what we have done
 16 or not done. I do believe the last time there was a
 17 rate hike it was 2006 set by the legislature and there
 18 hasn't been a rate height since then.

19 **Q. Did PMSA oppose that rate hike?**

20 A. I don't know what we did. It was a 2002 to 2006
 21 legislative decision. I don't know what our position
 22 was.

23 **Q. Okay. I'll move on.**

24 **With respect to callbacks performed by Puget**
 25 **Sound Pilots I have a couple questions, not many.**

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1 **Would you agree with me that absent a pilot**
 2 **coming back from their off-watch period, vessels in the**
 3 **Puget Sound would be delayed to reach their berth or to**
 4 **leave their berth?**

5 A. Under the current watch standing system, a
 6 dispatch system, yes.

7 **Q. Okay. What kinds of expenses do ships incur if**
 8 **they are delayed a waiting plan?**

9 A. That answer varies greatly on the time
 10 sensitivity of the shift involved.

11 A grain ship's time sensitivity is far less than
 12 a cruise ship. If a cruise ship was off, I don't know,
 13 an hour or two, people had planes to catch. If we had a
 14 cruise ship season -- I'm talking when we had 2000 --
 15 that would be a much different impact than a grain ship
 16 who had to slow down because it was raining on their
 17 loading factor.

18 So different vessels have much different time
 19 sensitivities involved in their -- in their pilotage
 20 services.

21 **Q. Okay. Well, would you agree that vessels that**
 22 **call in the Puget Sound have tug charges, line handling**
 23 **charges, longshoremen that we're going to pay for and**
 24 **other expenses that could increase if the pilot wasn't**
 25 **there to move the ship at its order time?**

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1 A. So just to be fair, the ships doesn't pay
 2 longshore wages in your example set there. They do pay
 3 for tug assist, line handlers, ship agent if they don't
 4 do it in-house. So there's a lot of court call charges
 5 like that. I'm just naming the main ones; pilotage
 6 tubs, line handlers, agent.

7 I'm sorry, what was your question, then, about
 8 that?

9 **Q. Well, so do -- do ships pay tugs by the hour?**

10 A. The tug -- the tug companies establish what they
 11 call a rack rate, and then they negotiate with repeat
 12 callers for service. And I'm not privy to whatever
 13 those renegotiations are. But they have a published
 14 rate.

15 And then, let's say you're a frequent caller,
 16 say Westwood 70 times a year, they would negotiate with
 17 either, say, Foster Crowley for a contract with them on
 18 tug service. And I don't know the details of that, and
 19 how much of that is hour and how much of that is a flat
 20 rate, I don't know.

21 **Q. Is it pretty generally understood, though, that**
 22 **if a ship is a waiting on pilot it is incurring**
 23 **additional expense, burning fuel and doing other things**
 24 **that cost the ship more money?**

25 A. Yes. Delays cost -- cost of variety of -- have

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1 a variety of costs depending on the situation.

2 **Q. Now, just considering those costs, would ships**

3 **prefer, generally speaking, to pay more to get a pilot**

4 **on time or pay delay charges?**

5 A. Ships would prefer, when they are in a

6 compulsory pilotage service area, to have compulsory

7 service.

8 So the ships believe that the state has provided

9 a set tariff and a number of pilots, and they have the

10 expectation that when they order, according to ordering

11 rules with advance notice, that they should get a

12 rested, competent and safe pilot on time. That's the

13 expectation.

14 **Q. Captain Moore, I guess we're having trouble**

15 **communicating today.**

16 **Would they prefer delays or would they prefer to**

17 **pay more for pilots, one of those two?**

18 A. They would prefer steps be taken to avoid the

19 delays.

20 **Q. Now, if that means paying more for pilots, is**

21 **that cheaper than the delays?**

22 A. So, again, if you can avoid the delay by having

23 a management of pilot resources that provides the pilot

24 on time, that's the preference. And that's the

25 preference with all their service providers.

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1 **Q. I understand. That's not my question.**

2 **Would the vessel rather pay more to make sure**

3 **the pilot can be there at it's order time. If there is**

4 **not an available rested pilot, or would it prefer to pay**

5 **for the cost of delays?**

6 A. I think it's a -- a no win answer there.

7 Without understanding what's causing the delay, they do

8 not want to spend more money on a delay. The crux of

9 the issue is what's causing the delay.

10 MR. FASSBURG: Judge Howard, would you mind

11 instructing the witness to answer my question?

12 MS. BROWN: I think the witness has answered

13 the question. The question is asked and answered

14 several times.

15 MR. FASSBURG: It was not an answer to the

16 question that I asked.

17 JUDGE HOWARD: Mr. Fassburg, I'm going to

18 agree with staff that -- the witness is answering your

19 question as posed.

20 If you would like to pose this as a

21 constrained hypothetical or this binary choice would be

22 forced on the ship, then this might be more of a binary

23 choice answer. But I believe he has answered your

24 question.

25 MR. FASSBURG: I'll rephrase the question.

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1 BY MR. FASSBURG:

2 **Q. As a hypothetical, Captain Moore, if a ship were**

3 **to have to pay a pilot 4 percent -- or 39 percent more**

4 **than what the pilot currently costs, would that exceed**

5 **the cost of a delay if the ship is waiting on a pilot by**

6 **five hours?**

7 A. Hypothetically speaking, a vessel would avoid

8 the cost at all times. But their cost to each vessel is

9 much different.

10 So if you are doing the hypothetical and you had

11 a specific issue like a cruise ship, that would be a

12 tremendous cost to them as opposed to maybe others.

13 **Q. When you say a tremendous cost, that would be --**

14 **do you mean the delay?**

15 A. I mean, if a cruise ship is delayed from a

16 schedule and all those folks on buses and planes, that's

17 a -- that's a pretty impactful situation.

18 **Q. What about containerships?**

19 A. Containerships vary. You have those in charter

20 business, you have those in weekly service, you have

21 those with schedules at docks, at other ports. They are

22 ahead of schedule, they are behind schedule. So it

23 really depends on a number of factors how sensitive an

24 hour is or two hours is.

25 Typically, they like to stay on schedule.

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1 Because they have other ports to go to with terminals

2 lined up and port call rotation times.

3 **Q. And you would agree with me that the longer it**

4 **waits the more it costs, a containership as well?**

5 A. In general, if you didn't want the delay, you

6 hadn't planned on the delay for other reasons, in

7 general that -- a ship not moving is not -- not the

8 intention of having a ship.

9 **Q. Sure.**

10 **Well, and my question, just to be clear is, the**

11 **ship has ordered a pilot for a specific time. No pilots**

12 **available. So the ship obviously wants to sail at that**

13 **time.**

14 **The longer the ship waits from the order time to**

15 **wait for a pilot, the more it costs the ship; correct?**

16 A. On a variable scale, that's correct.

17 **Q. And have you studied in any way the amount of**

18 **expenses a ship incurs in that delay?**

19 A. No, I have not studied across the spectrum a

20 one-minute delay from a one-our delay from a 30-minute

21 delay on different vessels and different situations, I

22 have not studied that.

23 **Q. Have you studied that for any vessel?**

24 A. No, not specifically.

25 **Q. Have you studied that for any class of vessel?**

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1 A. A delay on a scale from one minute to X amount
 2 of hours? No.
 3 **Q. Have you studied the cost of delays by the hour
 4 for any class of vessel?**
 5 A. I have not.
 6 **Q. Let's move on.
 7 You testified in your pre-file testimony that a
 8 pilot -- a Puget Sound Pilot performed 222 assignments
 9 in 2018. And I believe you said that pilot performed
 10 that number of assignments without a violation of rest
 11 rules.**
 12 **I want to make sure, because you said that based
 13 on that workload, there could -- there could be only 33
 14 pilots and they would be able to move all the ships. Do
 15 I paraphrase your testimony correctly?**
 16 A. Not exactly. It was establishing one end of the
 17 spectrum that was proven by -- by a pilot within Puget
 18 Sound that it is possible to move that many ships in one
 19 year.
 20 On Captain Carlson's spreadsheet, I see 40. He
 21 articulated actually 224 assignments for that -- for
 22 that pilot, and 161 of them were done while on watch.
 23 So we felt like that kind of proves what he could do in
 24 a strict rotation on watch and what you could do in
 25 total in an annual basis.

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1 In past years pilots have done as much as 230.
 2 **Q. Okay. Now, when you said that pilots -- excuse
 3 me -- all of the ship assignments in 2018 could have
 4 been performed with just 33 pilots. Do I understand
 5 what you're saying here now is this is a theoretical
 6 construct of what it could be. And you're not
 7 testifying, in fact, vessels could all have been moved
 8 on time had there been only 33 pilots?**
 9 A. I think we're on the same page here. I'm
 10 establishing that one pilot showed you could do that
 11 much work and that much work on watch and off watch.
 12 So as establishing a spectrum, it seems
 13 reasonable to take the busiest pilot and the least
 14 busiest pilot and establish a spectrum of what is going
 15 on now. And that's really simplistically what that was
 16 all about.
 17 **Q. Sure. And so just more literal, if there were
 18 only 33 pilots, would ships all move on time?**
 19 A. It would all -- it would completely depend on
 20 their watch standing and dispatch.
 21 We average around 6.9 vessel arrivals a day and
 22 6.9 departures, and we have some peak periods, like
 23 during cruise ship season. Unless you adjusted the
 24 watch from a two-watch system with earned time off and
 25 attended meetings and so forth there's no way that you

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1 move them. But if you adjusted the watch system, it
 2 would depend on the -- on the demand side if you could
 3 cover all the days.
 4 I would say peak days would be tough to cover
 5 with 33 pilots, but there's not many days where you have
 6 more than 25, 26 assignments.
 7 **Q. If you had multiple days in a row with 25 or 26
 8 assignments, and some of these assignments taking well
 9 over 12 or 13 hours for a pilot to travel to complete
 10 and be able to check-in.**
 11 **Would it really be possible for pilots to move a
 12 ship one day and be available for its sail time the next
 13 day, day in and day out so that with only 33 pilots you
 14 could actually move 25 ships a day?**
 15 A. Sure. If you -- if you bunched them all up
 16 together consecutive peak days after peak days, it would
 17 become tougher and tougher for sure.
 18 **Q. And, in fact, there are times when they bunch up
 19 together on peak days day after day; correct?**
 20 A. Well, I would love to see a histogram of that.
 21 We would love to see a daily breakdown of pilot
 22 availability versus pilot demand by zones. That would
 23 tell you how many days you have a year that are more
 24 challenging than others. That would be a great data
 25 point.

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1 **Q. My question is different. In fact, there are
 2 days where this happens, aren't there?**
 3 A. There are. But I have no idea what the mix of
 4 the assignments were.
 5 If you had eight shifts and three cancellations
 6 and 20 vessels arriving and departing, is different than
 7 30 vessels arriving and departing, which would be a real
 8 anomaly in one day.
 9 And if you bunch those together, I have no idea
 10 how many days in a row, what kind of bunching would take
 11 place with that kind of level of activity. On the
 12 average you're -- you were at 19 assignments a day,
 13 including cancellations in shifts, it's hard to imagine
 14 being too many days in a row double that.
 15 **Q. Okay. But you would agree that it's not
 16 actually possible for 33 pilots under any system to move
 17 vessels that arrived in the Puget Sound in 2008 on time
 18 every time?**
 19 A. No, I think they would run into some consecutive
 20 days there where they wouldn't -- they wouldn't be able
 21 to do that.
 22 **Q. Now, with respect to safety. Is it your
 23 contention that every single pilot in Puget Sound Pilots
 24 could perform 222 assignments per year without any
 25 fatigue problems whatever?**

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1 A. I'm just really pointing out that one pilot did.
 2 Every single pilot, I guess they have different
 3 circumstances. So since you have 50 pilots, it would be
 4 hard to understand all the different circumstances from
 5 medical and -- medical conditions and so on. But this
 6 particular pilot established that that can be done.
 7 **Q. Sure. My question was whether you contend every**
 8 **pilot can perform 222 assignments a year without fatigue**
 9 **problems?**
 10 A. I guess that would be -- hypothetically, I would
 11 say, yes. As a matter of practice, I think there's
 12 variance amongst the pilots in terms of all sorts of
 13 things, vacation and medical and so on.
 14 So I wouldn't think that his workload would
 15 apply to everyone equally, but he surely established
 16 that a pilot can do that safely.
 17 **Q. Okay. So I think you're agreeing, no, you don't**
 18 **say every single pilot can perform 222 assignments in a**
 19 **year without fatigue problems?**
 20 A. I think -- I think we can say that. I would
 21 love to see the reasons when they couldn't move that,
 22 and that would be instructive on helping manage the
 23 pilots. But I would say there's a lot of differences
 24 between all the different pilots.
 25 **Q. You testified in your initial testimony that the**

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1 **fatigue rules that were adopted in 2018 were not**
 2 **significant with respect to how pilotage was performed**
 3 **in the Puget Sound. Did I paraphrase that correctly?**
 4 A. I think that's close enough, yes.
 5 **Q. You would agree with me that the fatigue rules**
 6 **that were adopted in 2018 were a significant change from**
 7 **the prior rules and made pilot fatigue much less likely**
 8 **to occur; correct?**
 9 A. I think you would have to start with the rules
 10 that were implemented, the standards implemented in 2015
 11 in conjunction with the rules in 2018. All of those
 12 taken together improved fatigue management -- improved
 13 fatigue management and decreased risk.
 14 **Q. Now, I'm just talking about those that occurred**
 15 **in 2018, separating those from PSP's policies in 2015.**
 16 **You do agree with me that the rules that were new that**
 17 **were adopted in 2018 were a significant change that**
 18 **reduced the risk of pilotage fatigue?**
 19 A. I believe it improved pilot fatigue. I have not
 20 seen data to point to how many assignments were effected
 21 by a policy having 8 hours and 30 minutes of sleep and
 22 not ten -- a time to rest, and not ten, and what
 23 happened with that assignment. Nor have we seen, and we
 24 asked, how many pilots were actually on watch and
 25 available each day. So it's hard to understand and to

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1 evaluate objectively what the impact of those were.
 2 But strictly talking fatigue management,
 3 we support changes in fatigue management to increase
 4 safety.
 5 **Q. Okay. Now, when the Board of Pilotage**
 6 **Commissioners was going to make its legislative request**
 7 **to adopt its policy with respect to fatigue in 2018, you**
 8 **took no position and did not support the legislative**
 9 **request; is that correct?**
 10 A. I think I have a memo that articulated all of
 11 that, and with a summary statement that says, "As a
 12 result of not looking at all the factors, we neither
 13 support or oppose this at this time. We think it's
 14 premature and that other factors should have been looked
 15 at." And the memo specifies those.
 16 **Q. If that had not taken place, if the BPC had not**
 17 **made that legislative request, would there be a**
 18 **statutory mandatory limit on how many hours can be**
 19 **performed moving multiple -- or performing multiple**
 20 **harbor shifts?**
 21 A. My guess is there could have been a standard
 22 within the Puget Sound and there could have been an
 23 Washington Administrative Code action just as there was
 24 in RCW action.
 25 I just think that there are other factors and

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1 you need to look at all of them in order to avoid
 2 circumstances where you are bunching assignments
 3 together when they don't need to be. And making only,
 4 say, 11 pilots available on a particular day doesn't
 5 exactly help you spread out the load.
 6 **Q. So if I understand you correctly, the reason you**
 7 **didn't want new beneficial fatigue statutes to be passed**
 8 **was because you were concerned about efficiency and**
 9 **workload questions about basically getting pilots to**
 10 **work more?**
 11 A. To have a more efficient dispatch and watch
 12 standing system was part of it.
 13 If you don't make enough pilots available on
 14 watch and available -- the and is the keyword there --
 15 then you rotate through, in the case of 11 pilots on
 16 August of 2018, August 6th, then you rotate through to
 17 the number one pilot again after just 11 assignments.
 18 If you have to actually have half of the pilot
 19 core standing half the days of the year, then you would
 20 have a lot more pilots to cycle through and you would
 21 have a lot more rest in between assignments. And you
 22 would start minimizing chances where you bunch up
 23 assignments on an individual.
 24 I thought that was a critical element, and we
 25 pushed on that in the memo. We pushed on that in the

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1 fatigue management committee.

2 **Q. To be clear, the changes that you're talking**

3 **about would result in each pilot performing two more**

4 **assignments; correct? On watch specifically is what I**

5 **should have asked.**

6 **Your proposing what would have had pilots work**

7 **more assignments on watch?**

8 A. I -- I don't think -- I think that's -- I think

9 that's incorrect. I think what we're proposing is that

10 more pilots scheduled to be on watch should actually be

11 on watch and available.

12 **Q. And what would the natural result of what you're**

13 **talking about be that pilots work more while they are on**

14 **watch?**

15 A. Well, again, I didn't say every individual pilot

16 would work more. You have 22 -- 22 pilots on watch and

17 available is drastically different than having 11

18 available. If you have 11 available you are going to

19 cycle back to number one much faster than if you have 22

20 available.

21 Our expectation is when you have a pilot core of

22 50 and you're standing half of the days of the year on

23 watch, that we would have more pilots available. And if

24 you have more pilots available, you also then spread out

25 the assignments amongst those that are available.

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1 **Q. Either way, you did not support the BPC**

2 **legislative request to adopt new mandatory rest**

3 **requirements; is that correct?**

4 A. It's correct to say I did not oppose. That

5 sentence is very clear. We thought it was premature;

6 therefore, we do not oppose or support at this time. We

7 recommended all the factors be considered, so you can't

8 just take half of that sentence.

9 **Q. I'll move on.**

10 **If you could turn in your testimony to Exhibit**

11 **MM-1Tr, page 123.**

12 A. Yes, I have it up.

13 **Q. Okay. And I actually -- I don't, but I'll read**

14 **from my notes. Starting on page 123, line 5. My notes**

15 **say that you testified there, based on the overall**

16 **position of the ports in the Puget Sound compared to**

17 **other West Coast ports, does Puget Sound's relative**

18 **pilotage burden to its competitors?**

19 **Answer: No. To the extent that competitors are**

20 **taking advantage of the cost structure of pilotage that**

21 **impacts the ports in the Puget Sound, tariff increases**

22 **put Washington State ports at a competitive**

23 **disadvantage.**

24 **Did I read that correctly?**

25 A. Yes, you did.

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1 **Q. Now, we asked you in a data request to produce**

2 **all documents supporting that the port says market share**

3 **is a result of pilotage rates. That's Exhibit MM-84X.**

4 **If you could turn to that.**

5 A. Okay. Okay, I have it.

6 **Q. Okay. That was Data Request No. 163, which**

7 **asked you, again, Please produce all documents**

8 **supporting the port says market share is a result of**

9 **pilotage rates.**

10 **And subject to an objection, PMSA answered: The**

11 **data request mischaracterizes Captain Moore's testimony,**

12 **which did not purport a specific link between market**

13 **share and pilotage rates.**

14 **Rather, Captain Moore's testimony relied on the**

15 **comments of the ports and others to demonstrate that all**

16 **cost, including pilotage matters with respect to**

17 **competitiveness and contributes to marketplace**

18 **conditions.**

19 **Competitiveness is a key metric required to be**

20 **considered when evaluating the regulation of pilotage.**

21 **Under the Pilotage Act all specific sources relied upon**

22 **in Exhibit MMO-1 are either cited directly or provided**

23 **as an exhibit in PMSA's testimony?**

24 **Did I read that correctly?**

25 A. Yes, you did.

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1 **Q. Okay. And there's -- there's a key here I want**

2 **to make sure I understand.**

3 **You weren't testifying that there's any specific**

4 **link between pilotage rates and port market share. Is**

5 **that what you intended to say in your testimony, is that**

6 **there is no link that you're contending exists?**

7 A. So I -- I think it would have been better to say

8 all costs matter. And pilotage costs are one of those

9 costs. That was the intention of that, and maybe the

10 words were not specifically articulated that way within

11 the testimony in the answer to the DR. It was a better

12 answer where it talks about all costs.

13 And we've been told repeatedly about all costs

14 mattering; reliability, certainty, and all costs matter.

15 All costs include pilotage cost. And that's just what

16 our members tell us. And they get down to very marginal

17 costs when they are selecting ports to call on times 52

18 times a year and those kind of things.

19 So there's not a specific link to a specific

20 cost, but it's to the whole basket of costs that it gets

21 involved in a port competitiveness.

22 So it wouldn't be right to just say pilotage

23 only or tugs only or line handler only or what have you.

24 It's all costs matter.

25 **Q. Within the basket of cost that you just**

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1 **described, aren't there cost increases or rate increases**
 2 **that each of those other service providers or -- for the**
 3 **ports as a separate matter impose that change over time?**
 4 **Pilotage isn't the only cost that increases over time,**
 5 **is it?**
 6 A. Well, there's other costs that actually
 7 decrease. And they also have incentive money where they
 8 incentivize cargo to come through. In fact, in LA Long
 9 Beach they incentivized them with so many dollars per
 10 box and it led to some boxes in Long Beach all of a
 11 sudden going to LA.
 12 So there's incentive money, which is the
 13 opposite of a cost increase. There's freezing, there's
 14 cost reductions, and there are cost increases, depending
 15 which tariff or cost you were talking about.
 16 **Q. And just to make sure I understand your**
 17 **suggestion in your testimony just now. You aren't**
 18 **suggesting that Puget Sound Pilots should have volume**
 19 **rebates for preferred customers, are you?**
 20 A. No, no, no. No, I'm just saying that there is a
 21 reduction in cost. An intensive is equal to a reduction
 22 in cost. And those have been in place. Those are in
 23 play right now.
 24 **Q. I'll move on.**
 25 **And actually, I think I just have a couple more**

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1 **questions. You provided some testimony both in your**
 2 **initial pre-file testimony and in your cross-answering**
 3 **about the work performed by the vice president of Puget**
 4 **Sound Pilots.**
 5 **My only question on this topic is you base your**
 6 **testimony on the monthly activity reports to the Board**
 7 **of Pilotage Commissioners. And you don't actually know**
 8 **day in day and day out what Captain Carlson or any other**
 9 **vice president of Puget Sound Pilots actually does,**
 10 **correct?**
 11 A. I know some of the things he does. But I think
 12 to answer your questions most directly, it's a listing
 13 of him and certain meetings. It does not say the
 14 magnitude of the meeting or the length of the meeting
 15 and so on. So we have no idea of knowing the length of
 16 each of those meetings. It's listed for a whole day, so
 17 we don't know.
 18 **Q. Okay. And outside of the context of**
 19 **specifically listed meetings, you -- you aren't**
 20 **personally aware of what Captain Carlson or any other**
 21 **Puget Sound Pilot vice president does day in and day**
 22 **out?**
 23 A. I think he said today he eats and breathes and
 24 sleeps this. And I've been in enough discussions with
 25 him to know that he loves spreadsheets and he loves to

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1 mess around with them. So I know he does some
 2 spreadsheet analysis and data analysis. He seems to
 3 like that, and so I can only presume that that's part of
 4 what this is.
 5 **Q. Sure. And all I'm getting at is the rest of the**
 6 **time that he's working as the vice president that he**
 7 **hasn't described for you in discussion, you just don't**
 8 **know because you don't have personal knowledge?**
 9 A. No, we don't have -- and we don't have personal
 10 knowledge what the president does. Although, I -- I can
 11 take -- take ten second --
 12 MR. FASSBURG: Objection, nonresponsive. I
 13 just asked about the vice president.
 14 THE WITNESS: Okay. All right. We don't
 15 know what the president does or the vice president does
 16 on a day-to-day basis.
 17 BY MR. FASSBURG:
 18 **Q. Captain Moore, I want to move on. I think I**
 19 **have only one more question for you hopefully.**
 20 **In Exhibit 44 -- I'm sorry, MM-42T, on page 43.**
 21 **Could you turn to that page?**
 22 A. Okay. Is this the cross-testimony?
 23 **Q. Yes.**
 24 A. Okay. Getting there. Just a second.
 25 COMMISSIONER RENDAHL: What was the page

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1 reference?
 2 MR. FASSBURG: Thank you. Page 43.
 3 COMMISSIONER RENDAHL: Thank you.
 4 THE WITNESS: Okay. I'm there.
 5 BY MR. FASSBURG:
 6 **Q. There's a heading there, I believe it's heading**
 7 **number 8 on line 11, that says, "Ratepayers agree that**
 8 **PSP callback and retirement costs are internal costs**
 9 **that must not be externalized to the tariff to subject**
 10 **vessels to a double charge."**
 11 **Did I read that right?**
 12 A. Yes, you did.
 13 **Q. Now, I realize this is not in the question and**
 14 **answer portion of your testimony, but are you saying**
 15 **that you agree with staff, that staff somehow said the**
 16 **retirement is an internal cost that must not be**
 17 **externalized to the tariff to subject vessels to a**
 18 **double charge?**
 19 A. I'm reading the title. Did you go down into the
 20 sentences, is that what you're doing? Is that your
 21 question right now?
 22 Do you agree with staff -- we agree with staff
 23 that -- on the double collection on -- that we feel like
 24 the vessel was invoiced in full and paid in full at the
 25 time of service.

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1 How the tariff is set, what happens with all the
 2 revenue, it gets pooled together and distributed
 3 according to PSP rules.
 4 So we're just saying that you've paid in full at
 5 the time of service. And what you do with all of
 6 those -- all that revenue in terms of benefits or
 7 management of expenses or distributions or whether or
 8 not you want to pay a senior pilot more than a junior
 9 pilot because they bring in more revenue, it is up to
 10 PSP.
 11 **Q. Well, my question is a little different, so I'll**
 12 **ask it differently.**
 13 **First of all, did you write this heading?**
 14 A. I wrote the testimony.
 15 **Q. Okay. Was it your intention by this heading to**
 16 **assert that you're agreeing with a position taken by**
 17 **staff?**
 18 A. I believe staff spoke pretty directly on comp
 19 days, have already been fully paid for. And I believe
 20 staff was pretty direct on retire -- unfunded liability
 21 retirement, needs to go in a different direction and is
 22 recommending some effort around changing that in the
 23 future.
 24 **Q. Okay.**
 25 A. So we do agree with that.

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1 **Q. And --**
 2 A. Is that what you're asking me?
 3 **Q. Well, I think -- I think you got the first part**
 4 **for me clear.**
 5 **You're saying here ratepayers agree with**
 6 **staff -- that word is missing -- but ratepayers agree**
 7 **with staff that PSP callback and retirement costs are**
 8 **internal costs that must not be externalized to the**
 9 **tariff to subject vessels to a double charge.**
 10 MR. FUKANO: Pardon me. I would like to
 11 object. The title does not contain the word "staff" in
 12 it.
 13 MR. FASSBURG: And that was why I asked the
 14 question that he just confirmed --
 15 MR. FUKANO: Well, you're adding a word to
 16 the title.
 17 MR. FASSBURG: -- about staff.
 18 MS. DeLAPPE: If I might also add, this is
 19 cross-answering testimony. So it is cross-answering to
 20 staff's submission from May.
 21 JUDGE HOWARD: Mr. Fassburg, could you just
 22 re-word the question so we're a little bit clearer on
 23 exactly what you are reading. Because I think there was
 24 a word added at one point.
 25 MR. FASSBURG: Well, yeah. I'd be happen

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1 to. That's what I'm trying to get at.
 2 Captain Moore, when you say agree. With
 3 whom was PMSA agreeing?
 4 THE WITNESS: In that first question?
 5 BY MR. FASSBURG:
 6 **Q. In the heading there, Heading 8 on page 43,**
 7 **line 11 to 13.**
 8 A. Well, ratepayers, there's more than one
 9 ratepayer.
 10 **Q. When you --**
 11 A. Rate -- well, you are asking me -- ratepayers
 12 are cruise ships, Jones Act, articulated tug and barges,
 13 all the ratepayers are -- it's a plural statement. A
 14 ratepayer is not a single ratepayer. There's many, many
 15 ratepayers.
 16 **Q. Okay. Now --**
 17 A. Which happen to be our members.
 18 **Q. So I guess you're now saying that when this**
 19 **ratepayer agree, you mean ratepayers are agreeing**
 20 **amongst each other?**
 21 A. Yes.
 22 **Q. Okay. Now, the next question says, Do you agree**
 23 **with staff that it is important for staff to put on**
 24 **record its opposition to any attempt at double collect**
 25 **for services performed in a prior period?**

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1 A. Yes.
 2 **Q. So your heading was referring to just ratepayers**
 3 **amongst themselves.**
 4 **But then the next following question actually**
 5 **pivots. Now you're asking about does PMSA agree with**
 6 **staff; is that correct?**
 7 A. Well, since the topic was germane to the
 8 heading, I went into did staff address this or not. And
 9 they did, and we agreed with it.
 10 **Q. Okay. So just to be clear, you're not**
 11 **attempting to say here that staff opined retirement**
 12 **costs are internal that must not be externalized to the**
 13 **tariff to subject vessels to a double charge?**
 14 A. I would not presume to put words in
 15 Mr. Kermode's mouth. I think he wrote what we he wanted
 16 to say, and it is pretty clear what he said on comp days
 17 and retirement. I would just refer to him.
 18 MS. BROWN: Your Honor, this is Sally Brown
 19 for Commission Staff. These questions have been asked
 20 and answered repeatedly. So I mean, this may be perhaps
 21 Mr. Fassburg's style of cross, but it's inefficient and
 22 wasteful, and it is disrespectful to the witness.
 23 JUDGE HOWARD: You know, I'm --
 24 Mr. Fassburg, I would appreciate if you did move on.
 25 Because this testimony is citing to Kermode's --

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1 Kermode's testimony. I think it is referring to
 2 something specific.
 3 If you would like to nail down specifically
 4 what's at issue here, that could be helpful.
 5 MR. FASSBURG: Well, it's -- thank you, Your
 6 Honor. I'd be happy to.
 7 BY MR. FASSBURG:
 8 **Q. Captain Moore, is there anywhere in**
 9 **Mr. Kermode's testimony that he opined that retirement**
 10 **is an internal cost that must not be externalized to the**
 11 **tariff subject vessels to a double check?**
 12 A. Give me a minute to look really quickly. Look,
 13 his testimony wasn't very long. I could -- in a minute
 14 or so I could scan, scan through that.
 15 MS. BROWN: Your Honor, I would object
 16 again. This witness should not be cross-examined on
 17 Commission Staff's testimony.
 18 JUDGE HOWARD: I would allow the moment
 19 for -- for Captain Moore to look and indicate whether he
 20 agrees with staff's analysis on how the requirement
 21 could be charged in tariff.
 22 THE WITNESS: Where is --
 23 JUDGE HOWARD: If you could point him to the
 24 specific line item, that would certainly help.
 25 MR. FASSBURG: I can't do that. I can't do

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1 that. That was actually the point of my line of
 2 questioning.
 3 Captain Moore appears -- that's why I was
 4 asking him about this -- he appears to say he agrees
 5 with the position that I don't think staff took.
 6 And I'm trying to find out if that's what he
 7 meant or not. And if he meant it, where does -- where
 8 is it said.
 9 THE WITNESS: So did you -- am I on still?
 10 Am I still on?
 11 JUDGE HOWARD: Yes.
 12 THE WITNESS: Okay.
 13 JUDGE HOWARD: Mr. Fassburg, would you like
 14 to pose this question perhaps one more time, and then
 15 perhaps we pose your questions to Kermode.
 16 MR. FASSBURG: Well, I'm happy to.
 17 It is just difficult as a compound question.
 18 That's why we spent so much time trying to get through
 19 the foundation through the question that I really wanted
 20 to get to. But I'll ask him as a compound question, and
 21 if he doesn't follow it, can't understand it, we'll
 22 break it down again.
 23 BY MR. FASSBURG:
 24 **Q. Captain Moore, in the heading you appear to**
 25 **suggest that you're agreeing with the position taken by**

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1 **staff that the retirement is an internal cost that**
 2 **shouldn't be externalized to the tariff to subject**
 3 **vessels to a double charge.**
 4 **Did you mean that? And if you did, just point**
 5 **us to where Mr. Kermode said that.**
 6 MR. FUKANO: I would like to raise another
 7 objection. The witness testified that the agreement was
 8 amongst the ratepayers, not with Commission Staff.
 9 JUDGE HOWARD: I will grant that objection
 10 and focus on the heading.
 11 BY MR. FASSBURG:
 12 **Q. My question was: Is that what he meant? Did he**
 13 **mean that he agrees with Staff here? He answered no,**
 14 **apparently.**
 15 **So I don't -- I think that's what he was saying.**
 16 **But --**
 17 A. I did not answer -- I did not answer yes or no
 18 to that.
 19 My testimony says we agree with Mr. Kermode on
 20 comp days. And he -- and Mr. Kermode uses comp days
 21 in -- in -- in the same sentence with retirement.
 22 Callback days used for retirement. He put those two
 23 together in his own language.
 24 But I would just refer to whatever he said. His
 25 testimony speaks for itself -- for itself.

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1 **Q. Well, okay.**
 2 MR. FASSBURG: I think we beat this horse to
 3 death. I don't have any further questions.
 4 THE COURT: Thank you, Mr. Fassburg.
 5 Ms. DeLappe, do you have any redirect?
 6 BY MS. DeLAPPE: Yes, thank you.
 7 And Captain Moore and I are going to try to
 8 do kind of a relay with muting so that we, I hope, will
 9 not cause any problems for the court reporter. So it
 10 may take us a little longer than normal. Ask for your
 11 patience.
 12 REDIRECT EXAMINATION
 13 BY MS. DeLAPPE:
 14 **Q. Captain Moore, what is your view of tariffs that**
 15 **primarily rely on tonnage?**
 16 A. So the keyword there is "primary," primarily.
 17 If a tariff is overly dependent on tonnage, then we get
 18 into what we have called and termed repeatedly the
 19 tonnage penalty.
 20 San Francisco has that and Puget Sound has that.
 21 And that's why you see on those comparison bars down in
 22 Long Beach that their cost was so high is because of
 23 what we call a tonnage penalty. That is, you pay a lot
 24 more for each additional ton when you are a larger
 25 vessel.

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1 In Puget Sound specifically the rate is an order
 2 of magnitude higher at the highest rate than the lowest
 3 rate. And that ends up exacerbating the situation and
 4 creating a lot more cost per tonnage.
 5 We don't dispute that tonnage can be part, you
 6 know, of a tariff, but we -- we do not agree with
 7 escalating charges, and neither did the UTC staff in
 8 their presentation. We agree that increasing those
 9 rates as you go up is the wrong thing, and that's why I
 10 believe they recommended those rates for each level of
 11 tonnage would go down descending and not ascending.
 12 **Q. Thank you.**
 13 **And do you want to clarify your testimony about**
 14 **a test year approach to looking at expenses?**
 15 A. Yes, thank you.
 16 So we do believe a test year approach can work.
 17 It requires extensive look in our view at all of the
 18 expenses as to the need and the amount. And in that --
 19 in that, in such an approach, historical trends on
 20 certainly particular expenses may help in determining
 21 whether those expenses are excessive or within the
 22 bounds of normalcy, such as what would it cost to run a
 23 pilot boat. That seemed to be a very good example. You
 24 look at a few years of that data and you get a pretty
 25 good sense what to run a pilot boat type of deal.

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1 So we do believe a test year could work. It
 2 does, in our view, require a real deep dive on all the
 3 expenses, particularly in the first time through.
 4 **Q. Thank you.**
 5 **And to clarify your testimony regarding the**
 6 **change in pilot fatigue rules. Do you believe that**
 7 **pilots should have enforceable and reasonable rest**
 8 **hours?**
 9 A. Absolutely. I've been a marine safety advocate
 10 my whole life, and I've been involved in plenty of cases
 11 and investigations where fatigue was a root cause and we
 12 needed to take every step we can do minimize fatigue.
 13 **Q. And were you supportive of the former eight-hour**
 14 **rest rule?**
 15 A. Yes, I was.
 16 **Q. Were you opposed to the new ten-hour rest rule?**
 17 A. No. No, I am not.
 18 **Q. Can you please clarify your testimony with**
 19 **respect to whether the change from an eight-hour to**
 20 **ten-hour rest rule was significant?**
 21 A. Yes. The data seems to be a little bit mixed --
 22 mixed here.
 23 We certainly saw the data that was submitted in
 24 the spreadsheets on all the work hours, and could only
 25 identify one assignment out of 7,000 of over 14 hours

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1 duration unless it was a carry away assignment, meaning
 2 it carried away to British Columbia and so forth.
 3 So if you eliminate those going to British
 4 Columbia and you only have one assignment over 14 hours,
 5 is it doesn't seem to indicate a huge amount of
 6 assignments that would be affected.
 7 Furthermore, there are around 70 delays. It was
 8 not articulated on what type of vessel and whether the
 9 delay was one minute, ten minutes, 30 minutes or more.
 10 In some cases a grain ship might say look, we got to
 11 punt this until tomorrow, and all of a sudden back and
 12 forth with the pilots you have a delay.
 13 So if you have a minimal number of delays and
 14 you only have one assignment over 14 hours, it didn't
 15 seem to us data-wise that that indicated a significant
 16 number of assignments were impacted. And that dovetails
 17 in with making more pilots actually available when they
 18 are on watch and not doing other things.
 19 **Q. And what is your response to PSP's arguments**
 20 **that the change of rest hours was impactful to their**
 21 **ability to conduct business?**
 22 A. I think this is a crux of a disagreement between
 23 us. We -- we view management of the pilot resources to
 24 be a key issue here.
 25 If you're on watch, you should be on watch

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1 181 days. Captain Carlson said to get 365 days of
 2 distribution; 181 is really not half the year, but you
 3 can call it 181. We know looking at the data they are
 4 not on watch 181 days a year.
 5 So our view is management ought -- ought to
 6 increase the number of days they are on watch up to half
 7 the year, as they stated, and to make them actually
 8 available for a pilotage assignment when they are on
 9 watch.
 10 It makes no sense to have a pilot go on watch
 11 and then -- and spend more hours in meetings while on
 12 watch than off watch. That doesn't make sense to me.
 13 You got to identify the 220 days a year you don't want a
 14 pilot, it seems there's ample opportunity for them to
 15 figure out amongst themselves how they can each choose
 16 220 days a year where they are not piloting.
 17 **Q. And just to clarify, in your cross-examination**
 18 **with Mr. Fassburg, you referred to a memo. If you could**
 19 **look at the memo I have here, MM-96X. Is that the memo**
 20 **that you were referring to?**
 21 A. Yes, it is. I also have letters, but this is
 22 the memo they placed into my cross exhibit list. And I
 23 would urge anyone that wants to know what we're -- what
 24 we're conveying there about fatigue to read -- read the
 25 memo. It's not very long, and it gets into all the

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1 issues that we had concerns about.

2 **Q. And so you would urge reading the whole memo and**

3 **not just focusing on the last couple lines?**

4 A. Yes. And these important issues, fatigue

5 management and so forth, I think taking things out of

6 context would be the exact wrong thing to do. I think a

7 comprehensive A-to-Z look is what's really required.

8 **Q. I also just wanted to ask. You and Mr. Fassburg**

9 **were talking about MOU's and some various prior BPC**

10 **decisions and MOU.**

11 **Is there anything that you wanted to clarify in**

12 **your testimony regarding that?**

13 A. Sure. I think the MOUs sometimes get

14 misconstrued by folks that are new to this pilotage

15 discussion; that they're MOUs with the state or they are

16 MOUs with the Board of Pilotage Commission. They were

17 not.

18 They were private agreements to make a joint

19 recommendation that cut down the adversarial nature and

20 back and forth nature of tariff setting. And there were

21 compromises involved with many, many metrics. I do note

22 even -- even in the '83, '87/'88 references to the

23 tariff in the MOU back in the '80s that that was

24 predicated on a workload factor of 178, which was

25 predicated on setting a target net income of 105,000.

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1 In today's dollars that's 237,000.

2 So if you take the whole MOU and the history and

3 you want to pick one or two elements, that also is out

4 of context. If you want to look at all of them as a

5 comparison to help inform decision-making now, then I

6 think you need to take a look at all of those aspects,

7 not just one or two of them.

8 **Q. Thank you.**

9 MS. DeLAPPE: I have no further questions.

10 JUDGE HOWARD: Thank you.

11 Since staff has indicated possible cross and

12 there may be questions from the Commissioners for

13 Captain Moore, would we be amenable to taking a

14 15-minute afternoon break?

15 Mr. Fukano, were you going to say something?

16 MR. FUKANO: Staff has no objection.

17 JUDGE HOWARD: Let's take a 15-minute break,

18 hearing no concerns, and we will reconvene at 2:40 in

19 the afternoon.

20 Thank you. We'll be off record temporarily.

21 (A break was taken from to 2:24 p.m. to 2:41 p.m.)

22 JUDGE HOWARD: Let's be back on the record

23 to resume the testimony from Captain Moore.

24 Staff has indicated cross for Captain Moore.

25 Ms. Brown or Mr. Fukano, who would be handling this

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1 witness?

2 MR. FUKANO: Apologies, Judge Howard. After

3 some discussion, Staff has decided to waive cross of

4 Captain Moore.

5 JUDGE HOWARD: Not a problem.

6 Do we have any questions from the

7 Commissioners for Captain Moore?

8 Commissioner Balasbas.

9 COMMISSIONER BALASBAS: Thank you.

10 EXAMINATION

11 BY COMMISSIONER BALASBAS:

12 **Q. Good afternoon, Captain Moore.**

13 A. Good afternoon.

14 **Q. I just wanted to clarify. At the end of your**

15 **rebuttal -- or of your response testimony, you stated**

16 **that PMSA supports increasing the tariff to cover the**

17 **UTC's cost of administrating the rate setting process as**

18 **well as the training spectrum for the Board of Pilotage**

19 **Commissioners; is that correct?**

20 A. Yes, that is correct.

21 **Q. All right. And do you support that -- you**

22 **support that on an ongoing basis?**

23 A. It's my understanding that's how you get funded,

24 right, to do all this work? So I -- I thought that

25 that's just the way it worked.

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1 **Q. All right. And in -- in your testimony, were**

2 **you asserting that the Puget Sound Pilots were trying to**

3 **get their portion of what the legislature has required**

4 **of them to pay for the seal premium? Or were you**

5 **arguing that they are proposing to include that in the**

6 **tariff?**

7 A. Yes. Yes, that's correct. We -- think to put

8 in the tariff so that ratepayers would pay it and pay

9 that portion instead of them. Yes.

10 **Q. All right. Thank you.**

11 **COMMISSIONER BALASBAS: Thank you. I have**

12 **no further questions at this point.**

13 **JUDGE HOWARD: Any further questions from**

14 **the Commissioners?**

15 THE WITNESS: Can I just say one more thing?

16 JUDGE HOWARD: Captain Moore, probably not

17 in response -- when there isn't a question being posed

18 to you. We have our formalities.

19 THE WITNESS: It was apologies to Crystal

20 for speaking fast. My apologies.

21 JUDGE HOWARD: I'm sure she appreciates

22 that.

23 Thank you for your testimony, Captain Moore.

24 The next witness is Monique Webber for

25 Pacific Yacht Management.

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1 Ms. Webber, are you on the line?

2 THE WITNESS: Yes, I'm here.

3 JUDGE HOWARD: Great. I will -- I will

4 swear you in and then we can do the examination.

5 Please raise your right hand. Do you swear

6 or affirm that the testimony you will tell today is the

7 truth, the whole truth, and nothing but the truth.

8 THE WITNESS: I do.

9 JUDGE HOWARD: Thank you.

10 Could you please introduce yourself and give

11 me your name and your business address for the record.

12 THE WITNESS: Sure. My name is Monique

13 Webber. And my business address is 2284 West Commodore

14 Way, Suite 120, Seattle, Washington 98199.

15 JUDGE HOWARD: Thank you.

16 So who's identified, as indicated,

17 cross-examination for Ms. Webber? Mr. Fassburg, would

18 that be you handling that?

19 MR. FASSBURG: Yes, I will.

20 JUDGE HOWARD: Okay. You may proceed.

21

22 MONIQUE WEBBER, witness herein, having been

23 first duly sworn on oath, was

24 examined and testified as

25 follows:

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1

2 CROSS-EXAMINATION

3 BY MR. FASSBURG:

4 **Q. Ms. Webber, I think I only have a few questions**

5 **for you.**

6 **In this proceeding, you have in your pre-filed**

7 **testimony addressed an alternative system that exists**

8 **outside of the United States.**

9 **You do understand that that is not something**

10 **that is permitted legally in the state of Washington at**

11 **the present; is that correct?**

12 A. I do understand that. But I also wanted to make

13 sure that it was put on the record that I don't believe

14 that a tariff increase is going to resolve the problem

15 which is really at hand, which is the fact that there's

16 a shortage of pilotages and shortage --

17 MR. FASSBURG: Nonresponsive.

18 BY MR. FASSBURG:

19 **Q. I just had a question about the legal system in**

20 **terms of pilotage and its provision in the State of**

21 **Washington.**

22 A. Yes. I'm well aware that is not currently legal

23 in the state of Washington.

24 **Q. Okay. Ms. Webber, you represent the interest of**

25 **yacht maintenance companies in Washington; is that**

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1 **correct?**

2 A. No. I recommend [sic] the interest of

3 recreational vessels that are subject to pilotage.

4 **Q. Thank you for that clarification in particular.**

5 **What types of recreational vehicles are not exempt from**

6 **pilotage in Washington -- or from compulsory pilotage in**

7 **Washington?**

8 A. Any vessel that is foreign flagged that is over

9 200 feet in length or over 1,300-gross tons is not

10 eligible for an exemption under the current law.

11 **Q. Thank you.**

12 **Those recreational vessels that are over**

13 **200 feet in length, those tend to be very high value**

14 **recreational vehicles; is that right?**

15 A. I would assume that any vessel is high valued.

16 **Q. Sure.**

17 **Well, aren't recreational vessels over 200 feet**

18 **typically multimillion dollar vessels?**

19 A. Yes, I mean, I would assume. I don't build the

20 vessel, so I can't tell you the value of a vessel.

21 **Q. Have you ever investigated whether any of the**

22 **owners of the vessels that we're talking about are**

23 **billionaires?**

24 A. No, because I don't deal with the owners. I

25 deal with the crew.

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1 Do I know that they most likely are? Yes. Do I

2 personally investigate them? No.

3 **Q. Okay. It's not your testimony that billionaire**

4 **yacht owners can't afford to pay \$50,000 for pilotage**

5 **service in Washington to ensure that the waters are not**

6 **polluted and that they don't have an accident in one of**

7 **their very large yachts, are you?**

8 A. I'm sorry, say that again.

9 **Q. It's not your testimony that the billionaire**

10 **yacht owners of these large vessels can't afford to pay**

11 **an additional few thousands for a pilot to ensure their**

12 **large yacht does not cause an incident in the state of**

13 **Washington?**

14 A. It's not. But that's not the point of my

15 testimony.

16 **Q. Okay. I think I really only have one more**

17 **question. Ms. Webber, did PMSA write your testimony for**

18 **you?**

19 A. No. Why would you ask that?

20 **Q. Okay.**

21 A. That's so inappropriate.

22 **Q. I heard a rumor, so I thought I would ask just**

23 **to make sure. I have no further questions.**

24 A. I'm sorry, that is completely inappropriate and

25 exceptionally rude.

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1 JUDGE HOWARD: Ms. Webber, since -- since
 2 you don't have your own attorney right now, would you
 3 like to clarify anything that -- in response to the
 4 questioning from PSP?
 5 THE WITNESS: Yes. It's not that PYM and
 6 the recreational industry doesn't understand the request
 7 for a rate increase. We just feel that having the high
 8 burden of a 300 percent increase based on what PSP has
 9 proposed is highly unfair to the smallest segment of
 10 vessels that the PSP services.
 11 JUDGE HOWARD: Do we have any questions from
 12 the Commissioners for Ms. Webber?
 13 EXAMINATION
 14 BY CHAIR DANNER:
 15 **Q. Ms. Webber, let's say somebody owns a Sea Owl**
 16 **and they want to come into Puget Sound and they have to**
 17 **pay a higher pilotage fee.**
 18 **Are they going to turn around and go to a**
 19 **different port?**
 20 A. Most likely.
 21 **Q. So -- so they would do that. So to save a**
 22 **thousand dollars, they would -- they would go away from**
 23 **Puget Sound and go to Long Beach instead?**
 24 A. It depends on -- it depends on what they are
 25 coming in for. If they are just coming in to cruise and

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1 the pilotage rate to cruise for an orientation cruise
 2 is -- at the end of the proposed tariff is \$6,000 for an
 3 orientation cruise, yes, they will most likely not come
 4 in.
 5 **Q. Okay. Even though it is a -- I mean, a Sea Owl**
 6 **is a very expensive boat that is not owned by you or me**
 7 **or anyone here on the call that -- but they would be --**
 8 **they would be diverted by a thousand dollars here or**
 9 **there?**
 10 A. Yes. Because these are -- you -- these are
 11 really floating hotels with very tight budgets. And if
 12 it doesn't fit in the budget, then the boat doesn't
 13 come.
 14 And they take into account things like pilotage,
 15 taxation laws, and all of those things into account when
 16 they decide where they want to go.
 17 **Q. Really?**
 18 A. Yes. So they would bypass us and they would go
 19 to BC.
 20 **Q. Okay. And so you have -- you have talked to --**
 21 **or this is your experience?**
 22 A. Yes. In speaking to Captains, yes.
 23 **Q. Well, thank you. No further questions.**
 24 JUDGE HOWARD: **Any questions from the other**
 25 **Commissioners?**

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1 **Okay. Thank you, Ms. Webber, for testifying**
 2 **today. You may be excused. And please turn off your**
 3 **camera and mute your microphone.**
 4 THE WITNESS: Yes, sir.
 5 JUDGE HOWARD: The next witness will be
 6 Danny Kermode for staff.
 7 Is Mr. Kermode on the line?
 8 THE WITNESS: Yes, I am.
 9 JUDGE HOWARD: Mr. Kermode, I will swear you
 10 in and we will begin. Will you please raise your right
 11 hand.
 12 Do you swear the testimony you tell today is
 13 the truth, the whole truth and nothing but the truth?
 14 THE WITNESS: I do.
 15 JUDGE HOWARD: Thank you.
 16 Mr. Wiley, I presume you are going to be
 17 handling this?
 18 MR. WILEY: Yes, Your Honor. Thank you.
 19 JUDGE HOWARD: You're welcome.
 20 I'll ask Mr. Fukano, will you be handling
 21 objections?
 22 MR. FUKANO: Yes, Your Honor.
 23 JUDGE HOWARD: Will you introduce the
 24 witness and then on to Mr. Wiley.
 25 MR. FUKANO: Yes, certainly.

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1 DANNY KERMODE, witness herein, having been
 2 first duly sworn on oath, was
 3 examined and testified as
 4 follows:
 5
 6 DIRECT EXAMINATION
 7 BY MR. FUKANO:
 8 **Q. Good afternoon, Mr. Kermode. Will you, please,**
 9 **state your name and spell your last name for the record.**
 10 A. My name is Danny Kermode. That's s
 11 K-e-r-m-o-d-e. I am at -- I work with the Utilities
 12 Transportation Commission, and it's 621 Woodland Square
 13 Loop Southeast, Lacey, Washington 98503.
 14 **Q. And you have filed testimony and submission on**
 15 **behalf of the commission in this case?**
 16 A. Yes, I have.
 17 **Q. Do you have any changes or corrections that you**
 18 **would like to make to your testimony at this time?**
 19 A. Yes. I would like to make a correction and
 20 slight modification to my initial testimony.
 21 Due to a misreading of my analysis, if you go to
 22 DPK-1T on page 16, line 19 through 20, I would like to
 23 change the wording. The wording currently reads that a
 24 ship move takes between seven to eight hours on the
 25 average, results in a change consistent with the tariff.

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1 I would like to change that to the majority of
 2 ship moves are between six to seven hours resulting in a
 3 change consistent with tariff.
 4 That's the only change.
 5 MR. FUKANO: This witness is available for
 6 cross.
 7 JUDGE PEARSON: Mr. Wiley, you may proceed.
 8 CROSS-EXAMINATION
 9 BY MR. WILEY:
 10 Q. First of all, let me say, good afternoon,
 11 Mr. Kermode. It's been a long time since I've even
 12 talked to you, and I'm looking forward to this hearing
 13 being over so we can talk about all the backlog of solid
 14 waste issues that I haven't been able to discuss with
 15 you.
 16 So welcome. And -- by the way, do you have your
 17 cross exhibits, and you obviously have your testimony
 18 because you just amended it.
 19 A. Yes, I do.
 20 Q. Okay. So we'll try to move through this pretty
 21 quickly, hopefully.
 22 Were you here in today's testimony, by the way,
 23 of Ms. Webber and Captain Moore?
 24 A. Yes.
 25 Q. You know, in hearing their testimony today, I

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1 was kind of truck by how their constituencies are very
 2 different from the ones you and I usually deal with in
 3 transportation rate cases.
 4 We have mom and pop, single can, one -- one can
 5 a week customer, and you have -- and auto trans
 6 passengers, and we're talking about a \$5 fare. And you
 7 have a water company. We're dealing with a whole
 8 different set of ratepayers in this case, are we not?
 9 A. True.
 10 Q. In terms of your testimony, I actually don't
 11 have questions until we get about halfway through it.
 12 As a matter of fact, the first half of your testimony I
 13 think PSP and the staff were quite -- quite aligned with
 14 on methodology and those issues. And I should just say
 15 we all appreciate the legwork and research staff has
 16 done over the last 18 months.
 17 We had to do it, but we're in a different
 18 situation to learn this new industry that we are
 19 confronting and -- we're still learning. So thank you
 20 for all the work. I know you pored through a lot of --
 21 a lot of literature to get where you were.
 22 In terms of -- in terms of the methodology, do
 23 you agree that PSP and staff seem pretty aligned, it's
 24 just the inputs into the formula that you disagree with?
 25 A. Yeah, yeah. Basically there's a couple

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1 theoretical things. Obviously, callback, I think we had
 2 some theory issues with that.
 3 Q. Yes.
 4 A. Yeah, I think we've had a pretty good meeting of
 5 the minds, and I think that allows us to clear a path to
 6 at least clearly defining where we are different.
 7 Q. Right. And I appreciate that. And you -- you
 8 mentioned really the big issue that divides us, which is
 9 callbacks.
 10 So I want to try to gain a better understanding
 11 of your views and -- and see if my understanding of your
 12 testimony line up about it, even though we probably
 13 won't agree.
 14 The -- the first -- so callback is the real
 15 contentious issue that you take on. And you start at
 16 page 12 of your testimony by defining what callbacks are
 17 and what they are for, and then go into the issue of --
 18 of average versus peak staffing, which I -- I agree is
 19 also a key indicator of why callbacks exist. I think
 20 you believe that, too. And Dr. Khawaja was talking
 21 about average versus peak staffing issues, as you know.
 22 Do you agree, by the way, that the callback
 23 system is designed to prevent ship delays and that
 24 that's a shared goal not just of PSP but -- but also of
 25 customers like PMSA?

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1 A. Absolutely. Absolutely.
 2 Q. Do you agree that avoiding ship delays is also
 3 in the interest of all Puget Sound maritime
 4 stakeholders?
 5 A. Yes.
 6 Q. Okay. On page 14 of your testimony, which is
 7 DPK-1T for the record. You begin your central critique
 8 of the financial accounting of callback days and the
 9 decades-long accrual of that infamous off balance sheet
 10 liability; correct?
 11 A. Correct.
 12 Q. And you and I in the many years we've done what
 13 we do have not seen off balance sheet liabilities of
 14 this kind of scope before, have we?
 15 A. No. Yeah, very impressive.
 16 Q. I don't know if I would use the term impressive,
 17 but daunting.
 18 Then I want to go to line 10 on page 14 of your
 19 testimony, where you say however, PSP also states that
 20 callback days used during any other period costs nothing
 21 in the footnote, excuse me, of Walt Tabler's testimony.
 22 A. Right.
 23 Q. And I reread that testimony. Do you want me to
 24 get the notebook of that quotation that you are citing
 25 to, or can we just paraphrase it, because I can get it.

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1 A. I can look it up or you can --

2 **Q. It -- it really -- it relates, as you say, to WT**

3 **page 21, lines 1 through 6. And I'm trying -- let me**

4 **get -- I had my notebook, and of course, now it's not**

5 **here. Hold on. I need to find it in case you need it.**

6 **Sorry, the Teams atmosphere has caused a lot of**

7 **back and forth on the exhibits, but we're getting**

8 **hopefully better.**

9 A. I'm there. I'm there.

10 **Q. Oh, good. You are one step ahead of me per**

11 **usual. Okay. So it's page 21.**

12 A. 22. Page 22.

13 **Q. Yes, excuse me. Page 22, it kind of goes over**

14 **there.**

15 **And it says -- lines 1 through 6, you got that.**

16 **And you say, during that year only -- excuse me, Walt**

17 **Tabler says above in the line. For example, in 2006 the**

18 **callback day system was used 840 times to provide a**

19 **pilot when requested, but the net accrual only went up**

20 **192.**

21 **During that year only 103 days were burned by**

22 **retiring pilots requiring funding in the tariff. Thus,**

23 **545 callback days were used by active pilots, thus --**

24 **excuse me, thus -- yeah, were used by active pilots to**

25 **take a day off and cost industry nothing.**

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1 **And that's the quote that -- that I ask you**

2 **about.**

3 **In referring back to that testimony, would you**

4 **agree that that -- that kind of -- the statement "cost**

5 **industry nothing," was made in reference to the example**

6 **he posited, which was the use of callbacks in 2006?**

7 A. I think when -- when a callback is used during

8 the period, they earn it and then use it.

9 The -- the impact of the callback is not felt,

10 it's -- it's distributed. I believe Captain Carlson

11 even touched on it on his rebuttal.

12 So there -- there is a -- an impact, but I --

13 I -- it's not material enough to make a difference

14 compared to the accumulation over that long of time.

15 **Q. Yeah, I think we agree with that.**

16 **And -- and what I was asking you, basically, his**

17 **reference there that cost the industry nothing was his**

18 **example in 2006. And do you understand that it costs**

19 **the industry nothing in that context meant nothing**

20 **extra?**

21 A. I see what you are saying. Yes, yes.

22 No, since the industry did not impact the

23 industry in what they paid; correct.

24 **Q. Okay. Thank you.**

25 **On page 14, you also acknowledged that BPC --**

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1 **the BPC previously set rates for callback days by**

2 **including funding and rates for callbacks associated**

3 **with retiring pilots, a practice which Captain -- excuse**

4 **me, Mr. Tabler and others acknowledged in their**

5 **testimony that we just talked about.**

6 **We've actually submitted some exhibits which**

7 **referred to that funding for the record that I'd ask you**

8 **to review right now. And those are your cross**

9 **Exhibits 12X through 15. I'm sure you've already seen**

10 **them, but I wanted to call your attention to them to,**

11 **you know, because -- is it fair to say that you and I**

12 **both tried to read tea leaves in finding out what the**

13 **BPC did historically?**

14 A. Correct.

15 **Q. And this is -- this is about the only archival**

16 **records that I could find that talked about funding of**

17 **callbacks which you've acknowledged in your testimony.**

18 **But I wanted to call your attention to -- to**

19 **those four exhibits, 12 through 15X. And for instance,**

20 **on page 2 --**

21 MR. FUKANO: Which exhibit are you referring

22 to?

23 MR. WILEY: On 12, Counsel, 12X, which is

24 the ARCO letter.

25 BY MR. WILEY

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1 **Q. Mr. Kermode, calling your attention to page 2 of**

2 **Exhibit 12X, the last paragraph. This is a letter**

3 **written by ARCO Shipping Company, which is -- it's**

4 **either in its predecessor form or currently is a member.**

5 **I don't think ARCO exists anymore, but whatever the name**

6 **of the oil company is, a member of PMSA.**

7 **And this is in 1995 as a member of PSSOA what it**

8 **was writing. And I would like you to read that for the**

9 **record, please, that paragraph.**

10 A. The whole paragraph or the blue?

11 **Q. You can start with -- why don't you just read**

12 **the whole paragraph.**

13 A. Starting with the establishment?

14 **Q. Yes, please.**

15 A. The establishment of any format to gauge a pilot

16 level of a particularly dependent -- is particularly

17 dependent on the association's management having the

18 flexibility to provide service in times of high volume

19 of movements.

20 Essentially, this is accomplished by callback

21 pilots not on assigned duty and compensating them with

22 the time off in the future. Comp date accumulation

23 should be seen as and re-worded as an efficiency within

24 the pilot organization. It allows the association to

25 operate with an adequate level of pilots while being

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1 able to meet the regular schedule of vessel arrival.
 2 Currently comp times are carried in the notes to
 3 the financial statements as an unfunded liability. We
 4 believe that comp days should be fully funded either in
 5 the current year or retrospectively in the following
 6 year.
 7 Individual pilots should be able to receive
 8 compensation exclusive of their target net income or
 9 bank the days and the compensation going to the funding
 10 account for future use.
 11 We understand that this is an issue to which the
 12 pilot should agree internally and see this as a major
 13 item for future discussion. Therefore, we support the
 14 current method of banking comp days for future use.
 15 **Q. Thank you.**
 16 **And you see there that they were advocating that**
 17 **comp days should be fully funded as -- as a customer of**
 18 **the pilot at least in 1995?**
 19 A. Correct.
 20 **Q. Okay. Just -- and we'll move quickly**
 21 **through 13, 14, and 15. I just wanted to -- have you**
 22 **seen these documents before, Mr. Kermode?**
 23 A. Oh, I'm sure I did. Especially the meeting
 24 notes.
 25 But like you were saying, we did a lot of

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1 forensic, a lot of reading certainly the meeting,
 2 meeting minutes.
 3 **Q. Yeah. Okay. Let's go to 13 first. I'm just**
 4 **highlighting where I found any reference. And it was**
 5 **like finding a needle in a haystack historically, so**
 6 **these are the references I found.**
 7 **On page 1 of Exhibit 13, it -- it talks about**
 8 **the -- the preceding hearing on rate. And it says about**
 9 **the fourth bullet point down. Number of tariff-funded**
 10 **pilots including non -- one non-watch standing president**
 11 **and compensation for accrued comp days, 56.78.**
 12 **Did I read that correctly?**
 13 A. You did.
 14 Now, what is interesting about this one, is when
 15 you take the projected vessel assignments, the 8,262.
 16 **Q. Yeah.**
 17 A. And you divide it by the targeted assignment
 18 level or the maximum safe assignment level, 149, you get
 19 the 56.78.
 20 So it appears -- it appears not to be including
 21 the one non-watch standing president or any
 22 compensation. It's an interest in dynamics.
 23 **Q. I appreciate that.**
 24 **So you think this could have been an error?**
 25 A. I'm not sure. It's not what it -- what it

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1 shows. It applies that the total amount of pilots, the
 2 56.78 includes the -- the number of pilots needed for
 3 the assignment, plus one non-watch, plus compensation
 4 for accrued. Yet the result, 56.78, is merely the
 5 assignments divided by the targeted assignment level.
 6 **Q. Interesting.**
 7 A. Yeah.
 8 **Q. Do you believe the same issue -- I think you are**
 9 **a little more familiar with these minutes than I am.**
 10 **Let's go to Exhibit 14X, page 2. And -- and**
 11 **you've got that 7768 -- is that -- no, you said 8262 on**
 12 **the last one.**
 13 **So do you know if -- and I'll read it, and you**
 14 **can tell me if I read it correctly. It says, "Number of**
 15 **tariff funded pilots including one non-watch standing**
 16 **president and any compensation for accrued comp days**
 17 **equals 53, based on a maximum assignment level equalling**
 18 **149." Do you --**
 19 A. Correct.
 20 **Q. Do you know if that's the same issue that --**
 21 A. It's the same. It's the same.
 22 So we take the 7,768 and divide by 149, we get
 23 the 53 -- I count there. I think it is slightly
 24 rounded. And so it's -- it's an interesting -- you
 25 know, like I said, it describes it, but the numbers

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1 don't result in it.
 2 **Q. Yeah. It's -- I don't -- and let's go finally**
 3 **to 15. Are we seeing --**
 4 A. Yes.
 5 **Q. And that is -- hold on. That's the minutes from**
 6 **May 11th, 2000.**
 7 **And it says number of tariff funded pilots,**
 8 **including one non-watch, standing president and**
 9 **compensation for accrued comp days equals 55. Same**
 10 **formula there, too?**
 11 A. I believe -- I thought there was a problem from
 12 this one. But I can't remember what it was. I'll
 13 calculate quickly here.
 14 **Q. Or we can do it subject to -- I'm happy to --**
 15 A. I believe there was another problem. But --
 16 MS. BROWN: This is Sally Brown. I have an
 17 objection, Judge Howard. Mr. Wiley is marching through
 18 cross-exhibits that have been admitted into the record,
 19 so they speak for themselves.
 20 But Mr. Kermode did not author these meeting
 21 minutes of May 11, 2000. So to emphasize them and pose
 22 questions to this witness when he didn't prepare them is
 23 unfair and prejudicial.
 24 JUDGE HOWARD: I will -- I will allow
 25 Mr. Wiley to explore Mr. Kermode's position on this

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1 issue generally. But -- so I will this line of
 2 questioning.
 3 But I would prefer if Mr. Fukano handle the
 4 objections for this witness. Because I believe he is
 5 handling this witness.
 6 MR. WILEY: Thank you. I was going to ask
 7 if we could limit it. It was Judge Pearson's rule, and
 8 we're trying to honor it.
 9 THE WITNESS: In the meantime, yes. That's
 10 the same dynamic. I took the 8,238 divided by 149
 11 and got 55.
 12 It appears not to include the president or
 13 the comp time.
 14 BY MR. WILEY:
 15 **Q. You know, I don't know -- have you found any**
 16 **other relic from the past that would explain a historic**
 17 **treatment of callback state funding to lead us to how we**
 18 **got to this very large liability off the balance sheet?**
 19 A. I -- I found references. And the conclusion I
 20 was able to draw -- and I do this with, you know, with
 21 much respect. I -- I think there was not a clear
 22 understanding of comp dates. And so, like the Memo of
 23 Understanding, I -- I believe one of the years had a 1.5
 24 comp date calculation.
 25 I don't think it was done with a complete

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1 understanding of the dynamic. You know, being an
 2 accountant, I believe I truly understand what's going on
 3 there, and they just allowed it to the board has
 4 accepted the traditional discussion. And it's since
 5 we've received it we can sit back, reevaluate it and
 6 figure out what kind of structure does actually exist,
 7 and then apply it correctly resulting in the correct
 8 policy.
 9 **Q. I appreciate that comment, particularly since**
 10 **I'm just a lawyer, I -- I'm not adept with numbers like**
 11 **you, and I had been struggling with trying to piece this**
 12 **together in terms of how we got to where we are today.**
 13 **And I think you're acknowledging that you've had some**
 14 **struggles getting -- you've done your calculations, but**
 15 **getting the pieces of the puzzle together, it's been**
 16 **difficult. Is that a yes?**
 17 A. Yes.
 18 **Q. Okay. I noted earlier in your testimony at**
 19 **page 6 -- and you don't need to refer to it, I just**
 20 **wanted you to know that you said that you were trying to**
 21 **strive to adopt the BPC's approach to setting rates as**
 22 **much as possible. I'm sure they appreciate hearing that**
 23 **from you.**
 24 **Whether or not I think you have to, it's a**
 25 **different issue.**

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1 **But I did want to contrast your -- your policy**
 2 **recommendation on callbacks in 2020 with their historic**
 3 **treatment. Would you acknowledge that you are kind of**
 4 **making a big leap in terms of how you are recommending**
 5 **we deal with callbacks?**
 6 A. I don't know about the characterized as the big
 7 leap. I would say that this is one of the items that I
 8 commented that we took a different approach than what
 9 the -- the Commission did or the Board did.
 10 **Q. Yeah. And -- and in all truthfulness, we don't**
 11 **even know what the Board's position was on callbacks, do**
 12 **we?**
 13 A. Uh-huh. And you know, I considered -- you know,
 14 okay, even if we had -- let's say, we had three years
 15 with a clear discussion by the Board discussing funding
 16 comp days for the crews liability.
 17 I think it would still be up to staff to explain
 18 what the true dynamics is and to contrast it against
 19 what the Board is doing, and then recommend the very
 20 thing I'm recommending now.
 21 **Q. In terms of callback, your callback policy**
 22 **recommendation -- and would you agree that it's both a**
 23 **policy and an accounting recommendation that kind of**
 24 **converges in your testimony?**
 25 A. Yes, yes. I -- I think the accounting, the

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1 accounting allows the commission to clearly see the
 2 results of a policy decision.
 3 **Q. Okay. Are you suggesting -- I honestly want to**
 4 **understand your testimony. Are you suggesting that PSP**
 5 **is claiming that it did not get paid for the original**
 6 **movement of the ship when the assignment was performed**
 7 **by an off-duty pilot?**
 8 A. I'm not claiming that.
 9 I believe PSP has said numbers of times, that
 10 the comp days are unfunded. I'm -- it's my position
 11 that they were funded when the shipment --
 12 **Q. Yes. And you're -- I think you're -- you're**
 13 **starting to be an echoey. I don't know how that's**
 14 **happening. It's the first time.**
 15 **JUDGE HOWARD: It's a slight echo from my**
 16 **end.**
 17 **Are the Commissioners still able to**
 18 **understand?**
 19 BY MR. WILEY:
 20 **Q. I think we were on the fact that -- that you --**
 21 **you start on page 14 to kind of un-peel the onion about**
 22 **the form of the accounting as you address the callback**
 23 **concept.**
 24 **And you then -- then -- at line 17 of DK-1T on**
 25 **page 14 you explain that -- that -- that the practice, I**

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1 call it the truism over the -- those many years is
 2 largely attributable to -- to a form of accounting that
 3 PSP has used historically and -- and been submitted in
 4 annual audited financial statement to the BPC.
 5 Do you not -- I mean, isn't that really the crux
 6 of your claim?
 7 A. Yes. It's the modified cash basis that they use
 8 to basically ignore the -- a long-term liability.
 9 Q. Yes. I know there was some debate between
 10 accounting experts about whether it was modified cash or
 11 modified accrual. I'm not going there, because I
 12 wouldn't be convincing.
 13 But whether it's modified cash or modified
 14 accrual, your recommendation appears to be that PSP be
 15 required to convert its accrual -- accrual or modified
 16 accrual or modified cash based accounting, and then sort
 17 of simultaneously -- correct me if I'm wrong -- deal
 18 with the fallout from an accounting standpoint that that
 19 immediate recognition of the accrued liability would
 20 involve?
 21 MR. FUKANO: Objection. Compound question.
 22 JUDGE HOWARD: I'm going to allow the
 23 question, because it's asking what his -- what his total
 24 recommendation is. It -- yeah.
 25 Please -- please answer the question.

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1 THE WITNESS: Yeah. The current financial
 2 position of PSP exists right now as it is.
 3 These -- the lens through which we see that
 4 financial position is using the -- the modified accrual
 5 approach of doing it, I would say distorts the reality
 6 of that financial position.
 7 So we've -- we've removed the lens of that
 8 modified accrual that allows the disregard of the
 9 long-term liability and also some other things I want to
 10 get into. And we put in place, we put in this clear
 11 lens of GAAP.
 12 The underlying financial position of the
 13 company does not change at all. We're merely allowing
 14 the Commission to have a clear view of where it is. So
 15 when the discussion amounts to -- if you make this go to
 16 GAAP, the -- the ratification of that is going to be
 17 tremendous.
 18 Well, it's going to have is merely changing
 19 the lens in which we look at the company. Internally,
 20 nothing happens.
 21 And let me also add, I'm not recommending
 22 that they -- they can continue. PSP can continue to --
 23 to do their audited statement, do a governmental form of
 24 accounting, they can go ahead and do that.
 25 But for the -- I would recommend for the

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1 Commission, any report filed for the Commission be under
 2 the GAAP basis so they can keep their certified audit
 3 under modified approval.
 4 But for us, we need GAAP. Because the
 5 Commission is -- is setting financial records -- or
 6 financial decisions. We need -- they need a very clear
 7 picture of what's going on.
 8 BY MR. WILEY:
 9 Q. Mr. Kermode, I think I'm understanding your
 10 testimony a little better here. You know, I think we
 11 all want to move through a uniform system of accounting
 12 we are familiar with at the commission in terms of
 13 format.
 14 I guess my question to you in terms of what you
 15 just said is whether you were calling for PSP to, you
 16 know, presently, you know, on -- on the commission's
 17 order, to carve out decades long past aggregate
 18 liability that was apparently sanctioned for years by
 19 the BPC, to somehow deal with it presently at -- for an
 20 income.
 21 And I think that's where I'm not understanding
 22 your recommendation versus the practical effect of --
 23 A. I would say those are two different issues.
 24 The -- the idea of going to have financials prepared
 25 under GAAP is merely a -- like I said, nothing changes

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1 with PSP. It stays the same. It's merely the lens in
 2 which we're looking at the financial position of that
 3 company, of the association.
 4 Now, as far as the impact of should -- should
 5 the commission provide funding for -- for the deferred
 6 comp days, that's a different issue.
 7 And I would say -- and I say it in my testimony;
 8 that by not having an accrual GAAP basis accounting, the
 9 deferred -- or I'm sorry, the distributable net income
 10 of all those decades by using that governmental form of
 11 accounting, that modified accrual accounting overstated
 12 the net income.
 13 The net income was then distributed to all the
 14 pilots. So the pilots actually over earned during those
 15 periods by the amount of the liability.
 16 If normal accounting, GAAP accounting would have
 17 been prepared, the revenue would have been deferred
 18 along with the -- the liability. The -- the association
 19 would have -- if they were stewards, the association
 20 would actually have that money on hand, so when the comp
 21 time is taken and goes back into the income statement,
 22 the related funding would follow.
 23 That's what the problem is. And that's where --
 24 if the commission provides the -- the -- the funding,
 25 that's where we get the double accounting.

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1 Q. I think I understand what you're saying and, you
 2 know, obviously my question initially went to the near
 3 term fallout for the pilots if -- you know, the literal
 4 nature of your recommendation were immediately
 5 implemented.

6 But I would like to try to walk through a
 7 practical scenario so that I understand how the accrual
 8 accounting would work. And bear with me if I misstate
 9 as a lawyer, you will correct me. But I -- you know, as
 10 I understand, let's do it where accrual accounting or a
 11 ship movement is deployed here --

12 A. May I?

13 Your Honor, I notice your microphone is on.
 14 And I'm thinking that's where the echo is coming from.

15 THE COURT: Let me turn off my microphone.
 16 THE WITNESS: Let's see if that works.
 17 Go ahead. I was losing it with the echo.

18 BY MR. WILEY:

19 Q. No, I appreciate that. Thank you.

20 Okay. So what my scenario is, a ship movement
 21 is deployed in realtime, and we assume that no rested
 22 on-duty pilot is available to move the ship when
 23 requested.

24 So then PSP must then choose between dispatching
 25 an off duty pilot or making a ship wait. And let's say

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1 they have to wait for hours for the next rested pilot.
 2 In your view, when that happens is -- is
 3 there -- when the off duty pilot accepts the assignment,
 4 is it appropriate to -- I mean, is there any preference
 5 that you would have in that situation? I assume it
 6 would be to avoid the shift delay; right?

7 A. Oh, absolutely.
 8 And I say in my testimony I believe that the
 9 callbacks are a -- a -- an aspect of average staffing.
 10 So I --

11 Q. Thank you.

12 A. I think it happens. Absolutely.

13 Q. Okay. And so in your view, is there any
 14 additional revenue earned when that off duty pilot
 15 accepts the assignment compared to the revenue if the
 16 ship were made to wait.

17 I think the answer is no by what you've said; is
 18 that correct?

19 A. No. No.
 20 But I will tell you that there is additional
 21 money.

22 Q. Okay. And we're going to go into that. Your
 23 testimony addresses that, but I think we're going to go
 24 into that.

25 But if we can both agree there's no additional

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1 revenue, in that instance, wouldn't deferring the
 2 revenue by your income accrual suggestion actually
 3 decrease the present income of pilots almost -- almost
 4 punitively for accepting that additional work?

5 In other words, I'm trying to understand the
 6 affect of the accrual accounting in realtime here in
 7 terms of the revenue generation.

8 A. It would penalize who?

9 Q. Wouldn't it penalize the pilot who -- who
 10 performed the work and then consequently the
 11 association, if you deferred that?

12 I mean, it moved a ship, but wasn't going to get
 13 paid if you accrued it and deferred it?

14 A. But what happens is, remember, that pilot -- and
 15 we'll stick to let's say you have 50 pilots, right.
 16 Because measurer, net income is distributed by 50
 17 pilots. That pilot that takes the callback, that
 18 pilot's income is decreased by 50th of that charge. All
 19 the other pilots' income is reduced, or I should say
 20 deferred by 1/50th. It's a relatively small amount.

21 So I -- and -- and his -- the -- the pilots that
 22 accepted the callback, they are paying is equal to all
 23 the other's paying. It's the nature of the beast.

24 Q. I appreciate that. And I agree that in that
 25 hypothetical, it is a relatively small increment at

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1 amount.

2 The problem is the practice building up over 50,
 3 40 years and what we're faced with right now.

4 A. Uh-huh.

5 Q. Do you agree?

6 A. Right.

7 Q. Okay. You -- you also -- now, at page 18 of
 8 your testimony, I just -- this is not a major point, but
 9 I wanted to understand what you're saying and give you
 10 an example of where I think there might be a converse.

11 At page 18 of your testimony, you indicate that
 12 you think the current off books callback like --
 13 liability is likely inflated?

14 A. Yes.

15 Q. Because it's based -- and we lack current
 16 available information on the liability, which I agree
 17 with you on.

18 But you fault the method of calculating it
 19 because it relies, as you testify in the most recent DNI
 20 for that computation; correct?

21 A. Correct.

22 Q. And you are with me, right?

23 A. No, I'm there.

24 Q. Okay. The basis for that conclusion that you
 25 testified to is that it, quote, necessarily inflates the

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1 value of callback days because it assumes the value of
 2 callback days changes as DNI changes.
 3 But looking at -- at trends in 2019 that you
 4 testified about, and what we've experienced so far in
 5 2020, wouldn't that recent trend actually be the
 6 converse? In other words, wouldn't, if you used DNI in
 7 a period of declining revenues, it kind of deflates it,
 8 and wouldn't that be almost kind of an inherent true-up
 9 to that problem?
 10 MR. FUKANO: Objection, calls for
 11 speculation.
 12 JUDGE HOWARD: I'm going to allow the
 13 question. I think it's -- it's posing a -- a situation
 14 based on trends overall.
 15 THE WITNESS: The -- on deferred
 16 compensation, when a -- and this is standard accounting
 17 for -- for deferred compensation. When the compensation
 18 to be returned to the contributor year after year, the
 19 accounting actually recognizes a gain. The income
 20 statement actually recognizes a gain on that deferred if
 21 the return of that comp is equal to its current salary.
 22 So to do what you're saying I -- I would say
 23 most of the time it's going to be increasing, and so you
 24 will have this internal buildup.
 25 Standard accounting, I think if the

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1 accountant was to do that and decide instead to have
 2 maybe average cost, average all the layers together so
 3 you have the cost. There's, you know, there's inventory
 4 accounts, there's accounting methods to handle that.
 5 But just to take the amounts, multiply it by
 6 the most current DNA -- DNI and say here's the new
 7 value, I -- I think, again, that's the advantage of
 8 having it as an off book liability. That would not work
 9 when it's on the books. It would have to recognize the
 10 gain.
 11 BY MR. WILEY:
 12 Q. Is -- you know, what I'm thinking that you and I
 13 are familiar with is kind of like a commodity credit
 14 adjustment, where you adjust rates presently for
 15 cyclical trends in revenue on the secondary market.
 16 So isn't that really what's going on in that
 17 mechanism as you understand it?
 18 A. My -- my concern is that the -- hypothetically,
 19 let's say the commission decides that the shippers
 20 should bear the cost of the unrecorded liability and
 21 maybe change things going forward. So the --
 22 historically, we would handle unrecorded liability in
 23 one way and forward looking we would handle it on an
 24 accrual basis.
 25 Well, when it's valued at the current DNA --

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1 DNI, I would say that that unfairly has shippers pay the
 2 cost of that year by year by year gain that really
 3 didn't exist when that accrual happened. So that's my
 4 concern.
 5 Q. And conversely, though, in arrows of declining
 6 revenue, wouldn't that be sort of righted or remedied at
 7 all in your mind?
 8 A. It would mitigate it, but it would only be
 9 through happenstance, not by design.
 10 Q. Okay. I would like to get back, again, to your
 11 policy recommendation. And you've indicated that this
 12 decades long accrual that was grappling with callback
 13 liabilities, do you agree that that's one of the
 14 hallmarks or most glaring aspects of the black box that
 15 we all agreed is the BPC rate making tradition.
 16 A. Or when the -- yeah, when the results of it I
 17 think so.
 18 Q. Well, for instance, you've also cited the whole
 19 paygo (phonetic) system, another thorny issue we're
 20 grappling with. And you cited that as -- as something
 21 that merits very careful study and participation by all
 22 stakeholders to be mandated by the commission, which
 23 seems like a very prudent approach considering that
 24 liability as well.
 25 Do you also agree --

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1 JUDGE HOWARD: Mr. Wiley, Mr. Wiley, I think
 2 we're -- I think it's entirely natural to introduce
 3 questions and to have topics and a natural conversation
 4 flow. But I think at times we're verging here on making
 5 statements about -- about issues in the case.
 6 So we may need to push it a little bit more
 7 towards the question-and-answer format.
 8 MR. WILEY: Fair enough.
 9 I think we know each other so well that
 10 there is more conversation than being expected.
 11 BY MR. WILEY:
 12 Q. Mr. Kermode, do you agree that precipitous
 13 transitions on issues like pensions and callbacks are
 14 something that we should avoid in this first rate case
 15 with UTC?
 16 A. Well, pensions I would look at. I testified on
 17 callbacks. Callbacks are what they are. What I see was
 18 that the -- I just -- was it \$5 million liability?
 19 That's \$5 million that has flowed through to the pilots
 20 over those decades. The pilots got that money.
 21 Now, the -- now it is time to pay the piper.
 22 Now, the -- I recognize because they are on a cash basis
 23 that they didn't recognize that they were building up
 24 this liability. But -- but they did. And so -- I -- I
 25 guess I'm still -- as staff I would have to say no. I

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1 believe that -- go ahead, allow the callbacks to reverse
 2 as they should. The new callbacks coming in will help
 3 mitigate part of it, and slowly start paying that back.
 4 And -- and by doing that, by -- by doing the
 5 approach that I suggest with the liability and reduction
 6 of -- of the revenue, it actually adjusts the DNI.
 7 That's why -- that's one of the reasons we decided to
 8 call it the distributable net income. Because it might
 9 have had a greater income, but the question is how much
 10 should be distributed?
 11 Well, the -- using the liability method for
 12 callbacks, it actually reduces the distributable income
 13 to the correct amount and does not over distribute those
 14 amounts related to comp time.
 15 **Q. Mr. Kermode, I understand your testimony in that**
 16 **regard, and I appreciate the summary.**
 17 **What I'm really asking you, though, is more of a**
 18 **policy implementation question right now, which is, as**
 19 **you say, we've got a callback liability of five or six**
 20 **million, I can't remember. I figure it with the**
 21 **pension. They are both off sheet balance liability.**
 22 **Do you see any way, do you see any daylight in**
 23 **recommending to the Commission that this issue be**
 24 **addressed from a regulatory accounting standpoint as you**
 25 **do, but implement it in a staggered or -- or measured**

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1 **fashion so that the pilots are not immediately dealing**
 2 **with -- with \$6 million of an accrued liability that no**
 3 **one has ever challenged before at the prior rate?**
 4 A. I would have two proposals, I guess. I think my
 5 fear is to say, yeah, the status quo is fine and we'll
 6 get back to it later.
 7 I have found through life that that approach,
 8 things get sticky, and all of a sudden never changes.
 9 And so this is a case of first impression. I think
 10 sometimes hard choices have to be made. But it will get
 11 into the right path. But that's my opinion. The
 12 Commissioners are wise.
 13 **Q. I think we all share getting on that right path.**
 14 **My question, though, is whether you would be open as**
 15 **staff, as you've suggested, and you haven't heard any**
 16 **contention from us about the pension issue to be studied**
 17 **with experts and implemented in possibly a different**
 18 **fashion.**
 19 **But would you be willing to accept that model of**
 20 **stakeholder participation and measured analysis of**
 21 **implementing a change to another way of accounting?**
 22 **Would you be willing to entertain that as staff?**
 23 MR. FUKANO: Pardon me, I believe the
 24 question was asked and answered.
 25 JUDGE ARNOLD: I didn't hear a definitive

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1 answer to that. Perhaps it could it could be rephrased
 2 slightly to focus on Mr. Kermode's opinion.
 3 BY MR. WILEY:
 4 **Q. Mr. Kermode, I think you understood my question,**
 5 **but it was akin to your recommendation about a study**
 6 **measured, studious approach to reforming potentially**
 7 **deferred compensation for the pilots.**
 8 **Recognizing that this is a similar thorny very**
 9 **expensive issue, would you be willing to consider**
 10 **with -- with followthrough, not that the Commission**
 11 **could mandate, you know, participation by a broad group**
 12 **to address this very troubling issue?**
 13 A. I'd be happy to participate. But I don't think
 14 I would -- I'm not going to pull -- I'm not comfortable
 15 withdrawing my recommendation. But I would also, on the
 16 other hand, not be upset if the commission took that
 17 path.
 18 **Q. Fair enough. Thank you very much.**
 19 **JUDGE HOWARD: Mr. Wiley, is that all for**
 20 **your cross?**
 21 MR. WILEY: Yes, it is.
 22 JUDGE HOWARD: Thank you.
 23 Mr. Fukano, do you have any redirect?
 24 MR. FUKANO: Yes, Your Honor.
 25 REDIRECT EXAMINATION

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1 BY MR. FUKANO:
 2 **Q. Mr. Kermode?**
 3 A. Yes, sir.
 4 **Q. Would you please refer to cross-exhibit DPK-12**
 5 **or DP-12 as it listed in the list.**
 6 A. Yes. I'm there.
 7 **Q. On the first page of that letter, what -- can**
 8 **you please read the first full paragraph of that -- of**
 9 **that letter.**
 10 A. This is the letter from ARCO.
 11 **Q. That's correct. And it begins, as an employee.**
 12 A. As an employee of ARCO Marine, Inc., I represent
 13 a company with significant interest in upcoming tariff.
 14 AMI is not a member of the PSSOA. However, we are the
 15 largest customer, dollar-wise of the Puget Sound Pilots.
 16 Either myself or coworker, Jeff Shaw, has attended a
 17 majority of the pilots and between the Pilots and the
 18 PSSOA. Unfortunately, we find ourselves in a position
 19 that coincides with neither party.
 20 **Q. Thank you. Would you now refer to cross exhibit**
 21 **DP-14.**
 22 A. I'm there.
 23 **Q. And what is the date of these minutes?**
 24 A. May 12th, 2005.
 25 **Q. Do you recall when the last MOU between PSSOA**

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1 **and PSP was active?**

2 A. I'm thinking 2006, but that's off the top of my

3 head.

4 **Q. Thank you. In your testimony, how do you**

5 **describe the callback system relative to demand?**

6 A. As the -- to allow the average staffing of

7 pilots, the demand will be -- half the time the demand

8 is going to be higher than what the number of staffing,

9 and then half the time blow, because it's average

10 staffing, and you know, obviously it's imprecise, but

11 that's kind of the idea.

12 So inherently, when you start getting higher

13 demand, you will get callbacks. And like I said, I

14 personally have no problem with callbacks. It's not a

15 failure of the system. It's the way it works. And

16 with -- with the -- with the additional funds that

17 the -- that is provided through the implied pilot count,

18 the pilots are also reimbursed with that extra amount of

19 work that they have.

20 **Q. And are there other types of demand staffing**

21 **structures available?**

22 A. Well, we just saw -- there's, I believe, Great

23 Lakes has some peaking. They actually maintain a high

24 enough number of pilots to try to have staff on board

25 for any time that they arrive.

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1 And through my readings, there's -- there's then

2 the choice of anywhere in between. Most of the

3 states -- it's interesting. Once I leave the pilotage

4 area and start looking at how do you handle tolled, I

5 end up with queueing studies.

6 Emergency rooms have the same issue. They don't

7 know when accident victims are coming in. How do you

8 schedule a doctor?

9 So I think one of the approaches, other than

10 just having an average or peaking, there's possibly a

11 queueing study that could actually design a staffing

12 design that fits the pilotage demands of the Puget

13 Sound.

14 **Q. And to clarify your recommendation, are you**

15 **recommending that the Commission allow recovery of the**

16 **historic unrecorded callback liability in this case?**

17 A. No, I'm not. Because I believe the pilots have

18 already collected it.

19 **Q. And what regulatory principles, if any, inform**

20 **your opinion?**

21 A. You have the -- retroactively making, what

22 happens with payments of these liabilities is

23 recognizing expenses from prior period. You have

24 intergenerational problems.

25 Once again, the -- the amounts that are being

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1 embedded in rates to pay for these liabilities is not

2 related to those who are receiving service now. And of

3 course, just the question of double recovery, they

4 already recovered it when the service was provided, and

5 they recovered it again.

6 **Q. In your opinion, will adding additional revenue**

7 **solve the callback issue presented in this case?**

8 A. That's -- that's an interesting dynamic that

9 I've seen here. In a lot of the testimony we get

10 this off -- offset. It's -- it's if we have more money,

11 we can go ahead and cut down the number of callbacks.

12 Well, no, what you need is more pilots.

13 That's -- and Dr. Khawaja -- or Dr. Khawaja recognized

14 that. Providing more funding merely allows for larger

15 distribution of distributable net income.

16 **Q. And which of the pilots would receive that**

17 **distribution?**

18 A. All the pilots.

19 **Q. And to clarify, are you recommending that the**

20 **Commission require PSP to immediately adopt GAAP**

21 **financials?**

22 A. No. Once again, I'm saying for any filing

23 before the Commission, that the accountant takes their

24 modified accrual basis financials and do some relatively

25 minor adjustments to convert it to GAAP, recognizing any

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1 regulatory accounting requirements that the commission

2 may impose.

3 MR. FUKANO: Thank you. No further

4 questions.

5 JUDGE HOWARD: I see that PMSA has also set

6 aside some cross-examination time for this witness.

7 Ms. DeLappe, would you like to proceed?

8 MS. DeLAPPE: Yes, thank you very much.

9 CROSS-EXAMINATION

10 BY MS. DeLAPPE:

11 **Q. Good afternoon, Mr. Kermode.**

12 A. Good afternoon.

13 **Q. I just want to revisit that Exhibit DPK-12X**

14 **briefly. And Mr. Fukano covered my key question**

15 **already. And I have just one follow-up question**

16 **regarding this letter from ARCO Marine, Inc.**

17 **Is it your understanding from what you've seen**

18 **from this letter from 25 years ago that AMI may not have**

19 **understood that a liability of this magnitude would**

20 **buildup?**

21 A. I could only assume, because of course, they

22 don't have future ability.

23 **Q. Right.**

24 A. And something at that time is relatively small.

25 So yeah, I could assume it, I guess, as I read it. I

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1 wouldn't know obviously.

2 **Q. Of course. There's just no sign that we have**

3 **here that they -- also, there's no sign that they**

4 **considered alternatives such as a queueing study like**

5 **you allude to in your testimony today?**

6 A. No.

7 **Q. Thank you.**

8 **In the -- in your introduction of the staff**

9 **proposed rate making formula, you describe it as similar**

10 **to other rate making formulas used in other commission**

11 **regulated industries. And you identified those**

12 **industries as electric, natural gas, and water**

13 **utilities. Did I get that right?**

14 A. That's correct.

15 **Q. And you describe the common revenue requirement**

16 **formula that's supplied in those industries as revenue**

17 **requirement equals recoverable expenses, including**

18 **depreciation and income taxes, plus a fair return on**

19 **investment?**

20 A. That's correct.

21 **Q. Would you agree that the main difference between**

22 **the staff recommended formula in this case and in those**

23 **other similar rate making formulas is the lack of a rate**

24 **of return calculation?**

25 A. I would say if PSP actually had a rate base and

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1 investments which go along with it -- let's say

2 hypothetically the callback liability did not exist, or

3 it did not overwhelm the current equity, I think that we

4 would recommend that a rate return be given because the

5 pilots have invested money.

6 It might not be as material as the utility, but

7 I think as they would need a rate return. Let's say,

8 they got five -- \$10 million on pilotage boats. Yeah,

9 they need a return on that investment.

10 **Q. Thank you.**

11 **In your original testimony, sir, I'm looking at**

12 **Exhibit DPK-1T, and specifically page 8. And on that**

13 **page, line 21.**

14 A. I'm sorry, what page?

15 **Q. Page 8.**

16 A. Okay. I'm there.

17 **Q. So line 21 at the bottom is where you talk about**

18 **the revenue requirement formula.**

19 **And here you find that the equivalent of net**

20 **income that each pilot is allowed an opportunity to earn**

21 **for their labor performed is distributed net income;**

22 **right?**

23 A. Correct.

24 **Q. Okay. And so in our discovery requests for**

25 **PMSA, we asked the staff if the same TDNI revenue**

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1 **requirement could be generated through an application of**

2 **a revenue per assignment formula.**

3 **What's your -- what's your position on that?**

4 MR. FUKANO: Pardon me, could you direct the

5 witness to the discovery?

6 MS. DeLAPPE: Yes, I would be glad to. And

7 let me pull that up.

8 BY MS. DeLAPPE:

9 **Q. And I can say it was -- the data request was**

10 **PMSA data request 9 to the UTC.**

11 A. PPK-8X. It looks like page 2, I believe.

12 **Q. Yes. Thank you. I'm a little slower than**

13 **normal this afternoon.**

14 **Have you found the page that I was at?**

15 A. Yes.

16 **Q. Okay. Thank you.**

17 **And so there would you, please, describe why the**

18 **two formulas would result in an equivalent revenue**

19 **requirement?**

20 A. It's basically the -- the -- let me get the

21 right -- so we have the total ship assignments. So

22 let's say there's 5,000. And then we have the average

23 revenue per assignment, the ARPA. And that gives the --

24 you multiply that; that would give you the total

25 revenue.

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1 Well, where that fails is it does not allow us

2 to look at anything in the income statement. Nothing is

3 derived -- we just -- every revenue per assignment kind

4 of shows up. You -- you -- you have to find out, with

5 any rate making puzzle or -- or analysis, you find out

6 what the net income is. And then you back up into the

7 revenue requirement. That way you're able to see

8 everything involved. But then you get that total

9 revenue requirement.

10 Yours -- it's nice, it's pretty, the average

11 revenue per assignment. But it gives you nothing to be

12 able to have a touchstone as to what reality is. That's

13 what the difficulty is with that.

14 **Q. Would you agree that the revenue per assignment**

15 **is -- is, however, one of, well, many possible metrics**

16 **by which the revenue earned under the tariff for**

17 **pilotage activities might be measured?**

18 A. It could be a benchmark. And I thought that

19 myself. Yes, it could be a type of benchmark in which

20 going forward you can see what's going on looking at the

21 heartbeat of the situation, yes.

22 **Q. Thank you.**

23 **I know you talked already a lot today about the**

24 **callbacks. I have just a few questions for you on that**

25 **topic as well, Mr. Kermod.**

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1 **If we turn back to your testimony in DPK-1T and**
 2 **go to page 19.**
 3 A. I'm there.
 4 **Q. And specifically lines 3 through 6. Here you**
 5 **say, no -- regarding whether PSP's ratepayers should be**
 6 **obligated to fund the callback liability. You said no,**
 7 **my analysis clearly shows that there is no obligation to**
 8 **fund callback liabilities further than the amount**
 9 **already received for services; that the liability was**
 10 **incurred, the revenue earned when the pilot accepted the**
 11 **callback assignment and the service was performed.**
 12 **It sounds like your testimony today is that you**
 13 **continue to agree with that statement; is that right?**
 14 A. Yes, absolutely. Yes.
 15 **Q. Would you then agree with the PSP auditor,**
 16 **Ms. Norris, and I'll refer you to her statement that is**
 17 **in DPX-8X. And it's in response to PMSA data request**
 18 **417, so that is on page 8 of that Exhibit.**
 19 A. What exhibit again? I'm sorry.
 20 **Q. DP -- DPK-8X. And those are the PMSA data**
 21 **request number 417 at page 8 of that exhibit.**
 22 A. It's taking me awhile to find it. What page?
 23 I'm sorry.
 24 **Q. Page 8.**
 25 A. I'm there.

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1 **Q. See response to number 417.**
 2 A. Correct.
 3 **Q. And so this was from Ms. Norris, PSP auditor,**
 4 **regarding of her review of PSP's 2018 financials.**
 5 **Explain that PSP charged its customers in a manner**
 6 **consistent with the tariff provisions, and at the bottom**
 7 **of that page she admitted that.**
 8 **So would you agree that all of the revenues**
 9 **earned from each of PSP's jobs, including for callbacks,**
 10 **were distributed to all of the pilots, to the best of**
 11 **your knowledge, consistent with the bylaws?**
 12 A. Yes, yes.
 13 **Q. Thank you.**
 14 **And if all of the ships that received pilotage**
 15 **service from PSP also paid what was invoiced for that**
 16 **service to PSP, and then PSP subsequently distributed**
 17 **all that revenue to its pilot members, would you**
 18 **conclude that every assignment by PSP including**
 19 **callbacks was fully funded?**
 20 A. Yes.
 21 **Q. And I think I have just have one last question**
 22 **for you, and this is regarding the testimony of**
 23 **Dr. Khawaja.**
 24 **And I -- I can refer you to where, but I think**
 25 **you might recall, since I think you were attending the**

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1 **testimony yesterday, when he -- we discussed pilots**
 2 **working callbacks for free. Did you want to look at**
 3 **the -- that part or --**
 4 A. I will see if I can -- I remember the testimony.
 5 **Q. Yes. And he also believes that an additional**
 6 **premium needs to be paid to make up for the lack of**
 7 **funding.**
 8 **Do I take it from your testimony today that you**
 9 **disagree with Dr. Khawaja's characterization of the**
 10 **callback funding?**
 11 A. No. The -- the total distributable net income
 12 that the commission or -- I'm sorry, the staff is
 13 recommending, using prior methodology that's been used
 14 by the board, uses what I call implied pilots, a number
 15 of implied pilots.
 16 The implied pilots are the amount of pilots that
 17 you would need at the targeted assignment level to
 18 service all of the -- the ships coming in.
 19 So theoretically, the implied amount of pilots,
 20 you would -- using Dr. Khawaja's approach, you could
 21 eliminate a lot of callbacks, because you have a high
 22 number of pilots.
 23 Well, in reality, those pilots don't exist. We
 24 know that. So we -- we impute, let's say, the -- 52
 25 pilots, 53 pilots. But only 48 exist.

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1 That means there's approximately \$2 million of
 2 earnings that is being put into rates to account for
 3 that extra work that we expect the pilots to do.
 4 And so we're not asking 48 pilots to work
 5 overtime and work their hardest without pay. We're
 6 actually putting that into rates. What Dr. Khawaja does
 7 is he says, yeah, we -- we have the basic distributable
 8 net income. We add in what I call the premium for the
 9 imputed -- or the implied number of pilots. And then
 10 above that, we also add some overtime.
 11 Well, no, you already have the overtime. You
 12 already have that additional amount of money, and the --
 13 in our example, about \$2 million worth of extra money
 14 that will be evenly distributed to all of the pilots.
 15 Now, in those pilots that are not getting --
 16 that are actually doing the callbacks and going out and
 17 doing the work, and they said well, they are not getting
 18 paid. Well, that's a bylaw issue.
 19 The pilots have the ability to change the bylaw
 20 and to give those people that come in, those pilots to
 21 come and do the callbacks, give them a little bit of
 22 extra money. But giving them, the pilots, extra money
 23 on top of the premium, the excess, the implied pilot
 24 amount is, again, it's not solving the problem and
 25 merely just giving more money to -- to the pilots

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1 without any reason.

2 **Q. Very clear. Thank you very much, Dr. --**

3 **Mr. Kermode.**

4 A. Thank you.

5 MS. DeLAPPE: I have no further questions.

6 THE WITNESS: Thanks for making me a doctor.

7 MS. DeLAPPE: Sorry about that.

8 JUDGE HOWARD: Mr. Fukano, any redirect?

9 MR. FUKANO: No redirect.

10 JUDGE HOWARD: Do we have any question from

11 the Commissioners?

12 Commissioner Balasbas.

13 COMMISSIONER BALASBAS: Thank you.

14 EXAMINATION

15 BY COMMISSIONER BALASBAS:

16 **Q. Good afternoon, Mr. Kermode.**

17 A. Good afternoon.

18 **Q. So in your answer to Ms. DeLappe's last question**

19 **regarding the implied pilot count and the actual number**

20 **of pilots that exist, would you also agree that the**

21 **same -- the same theory you were talking about, about**

22 **that additional revenue to be distributed would apply if**

23 **the commission were to determine this case under the**

24 **Board of Pilotage Commissioners number of 56 pilots,**

25 **instead of staff's number of I believe 52 pilots?**

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1 A. Yes, absolutely.

2 **Q. All right. And based on the callback liability**

3 **that staff has identified in -- in preparing its**

4 **testimony, would -- would one consideration for the**

5 **Commission be that the additional revenue generated by**

6 **the number of pilots that the funding is based on, could**

7 **that also be used to apply to the unfunded liability,**

8 **distribution to the actual number of pilots?**

9 A. Oh, would it have the same effect?

10 **Q. Yes.**

11 A. So yes, it would.

12 COMMISSIONER BALASBAS: Thank you. I have

13 no further questions.

14 JUDGE HOWARD: Any other questions from the

15 Commissioners?

16 CHAIR DANNER: I have no questions. Thank

17 you.

18 JUDGE HOWARD: Mr. Kermode, thank you for

19 testifying today.

20 Our next witness is Ann LaRue for staff.

21 Ms. LaRue, are you on the line?

22 THE WITNESS: I am.

23 JUDGE HOWARD: Okay. How -- I did hear from

24 Mr. Fukano you had some IT connection issues. How are

25 you doing now?

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1 THE WITNESS: I have my incoming video

2 turned off, so hopefully you can see me. But I can't

3 see you. So hopefully that helps.

4 COMMISSIONER RENDAHL: We can see you.

5 THE WITNESS: Hi.

6 THE COURT: I will swear you in and we will

7 proceed with the testimony.

8 Will you please raise your right hand. Do

9 you swear or affirm that the testimony will you give

10 today is the truth, the whole truth, and nothing but the

11 truth?

12 THE WITNESS: I do.

13 JUDGE HOWARD: Thank you.

14 Mr. Fukano, will you be handling this

15 witness as well?

16 MR. FUKANO: Yes.

17 JUDGE HOWARD: Okay. Would you like to

18 introduce the witness.

19 MR. FUKANO: Yes, thank you.

20 ANN LaRUE, witness herein, having been first

21 duly sworn on oath, was examined and

22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. FUKANO:

25 **Q. Would you please state your name and spell your**

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1 **last name for the record.**

2 A. Ann LaRue, L-a-R-u-e.

3 **Q. And you have filed testimony and exhibits on**

4 **behalf of Commission Staff in this case?**

5 A. I'm sorry?

6 **Q. You have filed testimony and exhibits on behalf**

7 **of Commission Staff in this case?**

8 A. Yes, sir.

9 **Q. Do you have any changes or corrections that you**

10 **would like to make to your testimony at this time?**

11 A. I would like to make one correction.

12 **Q. And what is that?**

13 A. While preparing for the hearing, I noticed that

14 I inadvertently forgot to exclude a few lobbying

15 expenses from association dues paid by the PSP.

16 The total amount that I should have removed is

17 \$437.88. And while I wanted to file a -- while I wanted

18 to prepare a late filed exhibit, that it's -- this

19 amount is immaterial and I doubt that it will have any

20 change on the revenue requirement.

21 **Q. And is that the only change to your testimony?**

22 A. Yes, sir.

23 MR. FUKANO: This witness is available for

24 cross.

25 JUDGE HOWARD: Thank you, Mr. Fukano.

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1 Actually, I see we do have a request for a
2 break from PMSA. Would the Commissioners be fine and
3 the other parties be fine with taking a 10-minute break?
4 CHAIR DANNER: That would be fine.
5 JUDGE HOWARD: Okay. Let's reconvene, let's
6 just make it a round number, let's reconvene at
7 4:20 p.m. All right. We are off the record. Thank
8 you, Judge.
9 (A break was taken from 4:09 p.m. to 4.21 p.m.)
10 JUDGE HOWARD: Let's be back on the record.
11 Before you turn it over to Mr. Wiley for
12 cross-examination of Ms. LaRue, I just wanted to note a
13 follow-up. We requested the parties file errata sheets
14 for any corrected testimony, just the pages where the
15 corrections are made indicating in legislative format
16 what was changed.
17 And as I recall, that was only for
18 Mr. Kermode, and Ms. LaRue. But if other parties had
19 corrections that they were making at the hearing, please
20 file those within -- by next Thursday, August 20th as
21 well.
22 All right. Mr. Wiley, you may proceed.
23 MR. WILEY: Good afternoon, Ms. LaRue. PSP
24 waives.
25 JUDGE HOWARD: Oh, you're waiving your

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1 cross?
2 MR. WILEY: We are waiving our cross.
3 JUDGE HOWARD: Does Ms. DeLappe, do you
4 intend to have any cross-examination?
5 MS. DeLAPPE: Yes, thank you. We'll keep it
6 brief.
7 JUDGE HOWARD: You may proceed.
8 MS. DeLAPPE: Thank you.
9 CROSS-EXAMINATION
10 BY MS. DeLAPPE:
11 **Q. So Ms. LaRue, good afternoon. Regarding --**
12 A. Good afternoon.
13 **Q. Thank you.**
14 **Regarding the standards applied to the**
15 **evaluation of PSP's expenses, we just wanted to confirm**
16 **that you agree that you are recommending removing**
17 **several items as being nonessential from the PSP**
18 **expenses, and as being not reasonably required or**
19 **incurred in the provision of pilotage service?**
20 A. Perhaps. I removed several of those expenses,
21 but I would have to go through each one to determine why
22 each one of those was removed.
23 **Q. Let's talk about your review of PSP**
24 **transportation expenses.**
25 A. Uh-huh.

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1 **Q. Would you agree that the basis for the new**
2 **transportation expense charge was a proposal by PSP for**
3 **a change in its billing practices.**
4 A. Yes, that's what I understood.
5 **Q. Were you able to review the testimony of PSP**
6 **regarding the historic basis for the transportation**
7 **charges?**
8 A. Yes, ma'am.
9 **Q. And also the testimony of Captain Moreno, that**
10 **at least since 1964 the transportation expense charge**
11 **has been traditionally based upon taxi fares, which was**
12 **an estimation of expense?**
13 A. Yes.
14 **Q. Were you able to review the testimony of PSP**
15 **about the current tariff transportation charges,**
16 **including the testimony of Mr. Burton that the current**
17 **tariff transportation charge is for moving a pilot from**
18 **a business location to the ship or return, and that**
19 **there are 17 locations within Puget Sound where the**
20 **charges apply?**
21 A. Yes.
22 **Q. Upon your review, did you find that the prior**
23 **years' transportation charges, meaning before the test**
24 **year, did you find those to be a reasonable**
25 **approximation of the taxi fare valuation of moving from**

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1 **a business location to a vessel location?**
2 A. No. I did not evaluate the transportation
3 expenses prior to the test period. I asked for the
4 information of the last five years of transportation
5 expenses to see if the test year amounts was within the
6 same realm of the previous years.
7 **Q. Okay. Thank you for that clarification.**
8 **And have you found that the best practices are**
9 **similar to those allowances provided by the internal**
10 **revenue code in relation to the deduction of travel**
11 **costs for tax purposes?**
12 A. No, I did not review the internal code for tax
13 purposes.
14 **Q. Excuse me, I'm -- perhaps we should look at the**
15 **Exhibit. I have not made that question very clear.**
16 **So I'm at AMCL, Exhibit AMCL-15X.**
17 A. Uh-huh. Page?
18 **Q. And this is UTC response to the PMSA data**
19 **request 53. And so that is page 7 of that Exhibit.**
20 **And what I'm asking is not so much your -- your**
21 **analysis of the internal revenue code, but where you say**
22 **here, the accounting method is similar to allowances**
23 **provided by the internal revenue code in relation to the**
24 **deduction of travel costs for tax purposes.**
25 **Can you elaborate on that for us?**

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1 A. Just give me a moment to read this, please.
 2 **Q. Thank you.**
 3 A. Okay. Can you repeat the question for me?
 4 **Q. Certainly.**
 5 **You said that here the accounting method is**
 6 **similar to allowances provided by the internal revenue**
 7 **code in relation to the deduction of travel costs for**
 8 **tax purposes.**
 9 A. Uh-huh.
 10 **Q. Is it staff's position that the transportation**
 11 **costs should be similar in its accounting method to**
 12 **that?**
 13 A. So I state that it is a common accounting method
 14 used by both regulated and unregulated businesses. So I
 15 didn't speak to -- specifically to PSP's accounting
 16 method.
 17 **Q. Uh-huh.**
 18 A. Is that what you're asking me?
 19 **Q. Can you clarify Staff's position about it?**
 20 A. Okay.
 21 **Q. About which --**
 22 A. Staff would like to see actual expenses, which
 23 is part of why we rely on some historical actual
 24 expenses.
 25 And we understood that when the case was filed

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1 that PSP had performed a three-month study to justify
 2 their restating adjustment to increase transportation
 3 expenses for the rate year.
 4 But based on the historical amounts and the
 5 amount in the per books that PSP provided, that the
 6 amount in the test period was reasonable and did not
 7 require an adjustment.
 8 **Q. Could you tell us whether -- do you know whether**
 9 **commuting from home is generally an acceptable allowance**
 10 **for reimbursement of a transportation expense?**
 11 A. I wouldn't -- I couldn't see why it wouldn't be.
 12 **Q. Do you know for sure one way or another under**
 13 **the internal revenue code?**
 14 A. No, ma'am.
 15 **Q. Okay. Given that current tariff set up, which**
 16 **Mr. Burton described as moving pilots from a business**
 17 **location to a ship.**
 18 A. Uh-huh.
 19 **Q. Would you agree that under the current tariff**
 20 **it's set up to avoid reimbursement of a pilot's**
 21 **transportation from his home prior to reaching the**
 22 **business location?**
 23 A. I believe, as I understood it, that many of the
 24 pilots home is basically their business location. They
 25 don't have to necessarily be at the pilot office in

Page 603

1 Seattle or the Port Angeles pilot station. They live
 2 all over the Puget Sound area. So I think it's
 3 reasonable for staff to allow transportation expenses
 4 that -- to get them to their job from where they are.
 5 **Q. I'm sorry, I'm trying to -- I have too many**
 6 **different documents in front of me.**
 7 **PSP had a response to PMSA's data request 67**
 8 **where Mr. Burton talked about that. I'm not sure if you**
 9 **have that exhibit. It's exhibit WTB-31X.**
 10 A. Yes, one second.
 11 **Q. And it's page 14 of WTB-31X.**
 12 A. I only have six pages on my 31X.
 13 **Q. That's exactly it. Okay. So I must have looked**
 14 **at the wrong page numbers. Let me see. Yes, I looked**
 15 **at the -- it's page 3. So on the bottom of the page it**
 16 **says 14. Page 3 of the exhibit.**
 17 A. Okay.
 18 **Q. And it says, response to Data Request No. 67.**
 19 A. Uh-huh.
 20 **Q. And so --**
 21 A. Yes.
 22 **Q. -- Mr. Burton here says, one of those rates is a**
 23 **transportation charge for moving a pilot from a business**
 24 **location to the ship or return. There are 17 locations**
 25 **within Puget Sound where the charges apply.**

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1 **Is it your understanding that when he says 17**
 2 **locations, that that does not include pilots' homes?**
 3 A. I think that would be a better question for
 4 Mr. Burton.
 5 **Q. Okay. I just was wondering if you had any --**
 6 **since you -- you had reviewed the transportation**
 7 **charges, if you had any opinion about that.**
 8 **All right. So given the -- let me find my spot**
 9 **again. So would adding a reimbursement for commuting**
 10 **costs to and from a pilot's home -- I think, actually,**
 11 **you've already answered this.**
 12 **So in your testimony -- or in your -- in**
 13 **responses to PMSA's discovery requests, you said that**
 14 **you were told that the large -- there was a large**
 15 **increase in transportation charges that were a result of**
 16 **changes implemented by PSP regarding the accounting for**
 17 **and reimbursement of transportation expenses incurred.**
 18 **Correct?**
 19 A. Yes.
 20 **Q. In describing those accounting changes, did PSP**
 21 **ever disclose to you that they were now including**
 22 **charges for taking pilots to and from their homes to**
 23 **vessels instead of from a set business location, like**
 24 **the Seattle office?**
 25 A. Okay. So as I understood it, that they have in

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1 their current -- current tariff 17 different locations
 2 and different charges based on those locations. And
 3 what they were attempting to do was make a single
 4 expense regardless of where you traveled from. And
 5 therefore, I did not consider the travel from home to be
 6 an issue.
 7 **Q. Uh-huh. So -- so my question, just to go back**
 8 **to it, was whether PSP disclosed to you that part of the**
 9 **change was that they were accounting for the**
 10 **transportation expense by the pilot's individual home**
 11 **instead of how it's calculated under the current tariff.**
 12 **Did they disclose that to you?**
 13 A. I don't recall them saying that.
 14 **Q. Thank you.**
 15 **And did PSP ever disclose to you that they were**
 16 **now including non-taxi fare based on charges -- based on**
 17 **these charges instead of the taxi fare-based charges?**
 18 A. Uh-huh. I assumed that they were using the
 19 transportation that is available in this day and age,
 20 which could be a lift or a -- a ride share, ferries,
 21 buses, if that -- if so called.
 22 So I understood it to be what was the best mode
 23 of transportation prudently incurred.
 24 **Q. And how do you define "prudently incurred?"**
 25 **Like, would that include a town car or limo services?**

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1 A. I would have to see the expense related to
 2 those. But I would say imprudently incurred might be
 3 to book a private jet to go to Port Angeles from, you
 4 know, Eastern Washington; that might be imprudently
 5 incurred. That would be an example.
 6 MS. DeLAPPE: Thank you very much for the
 7 clarification. I have no further questions.
 8 JUDGE HOWARD: Mr. Fukano, any redirect?
 9 MR. FUKANO: No. No redirect at this time.
 10 JUDGE HOWARD: Do we have any questions from
 11 the Commissioners for Ms. LaRue?
 12 EXAMINATION
 13 BY CHAIR DANNER:
 14 **Q. I just want to be clear about something. I was**
 15 **looking at the testimony, for example, of Mr. Scott**
 16 **Coleman and both the president and vice president of**
 17 **PSP, and they all list their business addresses as 2003**
 18 **Western Avenue in Seattle?**
 19 **And I was just wondering, is that the business**
 20 **address of all the pilots, or is that just for those**
 21 **three pilots are listing their business addresses as**
 22 **their homes in most cases?**
 23 **Do you know that, Ms. LaRue?**
 24 A. I do not know that. But when we've interacted
 25 with the pilots at their offices, they often had to come

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1 in. So because of their work being so spread out that
 2 we found that it wasn't uncommon for the pilots not to
 3 necessarily go into the office every day.
 4 And I think in this day and age that that is --
 5 considering that we're having a virtual hearing right
 6 now, I don't think that that's really unexpected.
 7 **Q. Have you done any kind of look at whether the**
 8 **transportation expenses would be considerably higher or**
 9 **lower using their homes as opposed to 2003 Western**
 10 **Avenue?**
 11 A. Mm-hmm. So this might be the issue if the
 12 \$156,000 adjustment that Mr. Burton proposed were
 13 allowed. Because while I looked at the five years
 14 prior, the transportation expenses remain relatively
 15 stable.
 16 But the largest increase that we saw was just
 17 over 1 percent, and that was -- from 2017 to 2018 there
 18 was a 1.09 percent increase of expenses for
 19 transportation. But with the -- Mr. Burton's
 20 adjustment, that would be almost a 13 percent increase
 21 in transportation expenses.
 22 So if coming from their home has caused those
 23 expenses to increase that much, maybe they should
 24 re-think that. But this is also why staff recommended
 25 disallowing this adjustment, because the transportation

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1 expenses as they are, are reasonable, and no adjustment
 2 in our opinion is necessary -- is necessary.
 3 CHAIR DANNER: All right. Thank you very
 4 much.
 5 JUDGE HOWARD: Any -- Commissioner Rendahl?
 6 EXAMINATION
 7 BY COMMISSIONER RENDAHL:
 8 **Q. Good afternoon, Ms. LaRue. How are you?**
 9 A. I'm good, how are you?
 10 **Q. Good.**
 11 **So I have a question for you about the**
 12 **amortization schedule that you recommended for legal**
 13 **expenses and consulting fees.**
 14 A. Okay.
 15 **Q. Do you need a reference to your testimony to**
 16 **these to those portions of your testimony.**
 17 A. Yes, please.
 18 **Q. If you look at your response testimony.**
 19 **Actually, it is your initial testimony, 1 TR.**
 20 A. Yes.
 21 **Q. Page 16. There's a few references, page 16.**
 22 A. Uh-huh.
 23 **Q. Lines -- well, starting on page 15. You have**
 24 **a -- you say at the bottom for the legal expenses a**
 25 **three-year period as intermediate legal expenses, and**

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1 **amortizing the other half over a seven-year period is**
 2 **foundational.**
 3 **And you have a similar recommendation for**
 4 **consulting fees. Is that your understanding of your**
 5 **testimony?**
 6 A. Yes, ma'am.
 7 **Q. Okay. So has the Commission ever adopted a**
 8 **seven-year amortization schedule for such expenses in**
 9 **other rate cases? Or is this because this is a case of**
 10 **first impression and -- and a new industry and we're**
 11 **starting out that you've recommended a seven-year**
 12 **amortization schedule for some of these expenses?**
 13 A. It was -- we felt because this is the very first
 14 case that there was a lot of ramp-up and, you know,
 15 Mr. Wiley said something about 18 months. I think it's
 16 been closer to two years that staff has been trying to
 17 get up to speed on this.
 18 I can imagine that the pilots with the attorneys
 19 and their consultants also spent quite a bit of time and
 20 money preparing for this case. Therefore, we felt that
 21 it was reasonable to allow a recovery of some of the
 22 expenses over a shorter period of time.
 23 But we fully believe that the foundational work
 24 that went into this case will absolutely serve them
 25 going forward for at least seven years. I would think

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1 could possibly even be longer.
 2 **Q. Okay. So was there -- go ahead.**
 3 A. But that's -- we decided seven years was fair.
 4 **Q. And so was there any particular basis for the**
 5 **seven years? I'm just trying to get a sense of the**
 6 **understanding of why seven years as apposed to five.**
 7 **Is there any sort of tax basis or other cases**
 8 **that the commission has done that give -- that just**
 9 **trying to get a sense of why the seven years?**
 10 A. Okay. So we didn't think -- we thought,
 11 maybe -- so five years wasn't long enough. We felt like
 12 ten years was too long. And we felt that seven years
 13 was reasonable for half of those expenses, since they
 14 were so much.
 15 Plus there's a very large expense here that
 16 we're talking about, you know, amortizing and -- so I
 17 think that my adjustments make the amortization a little
 18 bit more palatable for rates.
 19 **Q. Okay. Thank you. Just asking this to the**
 20 **justification. So thank you. I have no further**
 21 **questions.**
 22 **JUDGE HOWARD: All right. Any further**
 23 **questions from the Commissioners?**
 24 **Okay. Thank you, Ms. LaRue, for testifying**
 25 **today. You are excused.**

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1 THE WITNESS: You are welcome. Thank you.
 2 JUDGE HOWARD: Please turn off your camera
 3 and mute your microphone.
 4 Our last witness for the hearing is Scott
 5 Sevall for staff. Mr. Sevall, am I saying that
 6 correctly?
 7 THE WITNESS: You are. You are. And if
 8 you're not, you can go back to, like, 2015 and refer to
 9 some open meeting notes where Danner asked. Chair
 10 Danner, sorry.
 11 JUDGE HOWARD: Mr. Sevall, I will swear you
 12 in. Will you please raise your right hand.
 13 Do you swear or affirm that the testimony
 14 you will tell today -- you will give today is the truth,
 15 the whole truth, and nothing but the truth?
 16 THE WITNESS: I do.
 17 JUDGE HOWARD: Thank you.
 18 Mr. Fukano, looks like you are handling this
 19 witness.
 20 MR. FUKANO: Yes, Your Honor.
 21 JUDGE HOWARD: Would you please introduce
 22 him?
 23 SCOTT SEVALL, witness herein, having been
 24 first duly sworn on oath, was
 25 examined and testified as

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1 follows:
 2
 3 DIRECT EXAMINATION
 4 BY MR. FUKANO:
 5 **Q. Good afternoon. Would you please state your**
 6 **name and spell your last name for the record?**
 7 A. Scott Sevall. Last name is S-e-v-a-l-l.
 8 **Q. And have you filed testimony and exhibits on**
 9 **behalf of Commission Staff in this case?**
 10 A. Yes, I have.
 11 **Q. And do you have any corrections to make to your**
 12 **testimony or exhibits at this time?**
 13 A. No.
 14 MR. FUKANO: This witness is available for
 15 cross.
 16 JUDGE HOWARD: Mr. Fassburg, you may
 17 proceed.
 18 MR. FASSBURG: Thank you.
 19 CROSS-EXAMINATION
 20 BY MR. FASSBURG:
 21 **Q. First of all, good afternoon, Mr. Sevall. It's**
 22 **been a little opportunity to cross-examine you at the**
 23 **Commission. I know I was the first to get to**
 24 **cross-examine you at the Commission. How many are we up**
 25 **to now?**

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1 A. Three or four.

2 **Q. Okay. Well, I'm happy to have the opportunity**

3 **again.**

4 **So would you mind first describing generally**

5 **what your role was in this rate proceeding.**

6 A. My role was to help determine the level of

7 funding, so DNI. And to determine how many pilots to

8 apply that to. That's the main crux there. And then

9 also rate design.

10 **Q. Okay. I would like to take those one at a time.**

11 **Although maybe, perhaps, not in the order that you went**

12 **through. Although I think I would like to start at even**

13 **more of a theoretical and policy level.**

14 **When you set about to determine the number of**

15 **pilots to fund in the revenue requirement, was there any**

16 **specific goal or policy that you had in mind before you**

17 **started your work?**

18 A. Before I started my work, I had to kind of

19 explore what -- what methods there are out there for

20 setting rates. And specifically, I mean, not just

21 regulated rate setting as I know, but is there anything

22 out there as far as specific to pilotage. And so I

23 found four -- four primary methods I believe.

24 One, which isn't applicable in this case, is

25 union contracts. You have people who are pilots that

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1 are represented by unions and they negotiate with an

2 entity and get rates.

3 Another -- another method would be a negotiated

4 agreement or a settlement. So this can bring in the

5 regulatory body, similar to the '95 and then 2001 MOUs

6 between PMSA and the shippers -- or PSP, where they came

7 to an agreement and brought it to the Board at the time.

8 And that was a joint recommendation, right, a

9 settlement. And this commission is very familiar with

10 that sort of concept.

11 Then there are two others. There is a

12 historical analysis, which again, the commission and

13 Commission Staff are very -- are very aware of. It's

14 the whole basis that a pro forma, an income statement

15 even works off of.

16 And then there is also comparable analysis that

17 can be done.

18 Those are four kind of basic methods for how you

19 could proceed about determining rates.

20 Does that answer your question?

21 **Q. It's helpful.**

22 **And I really wanted to focus more on the number**

23 **of pilots. But that -- that's still, I think, guiding**

24 **of what we're looking for or- what I'm looking for here.**

25 **So when it comes to setting a target assignment**

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1 **level or using some other method by which to determine**

2 **the number of pilots that ought to be funded in the**

3 **revenue requirement, it sounds like you settled on using**

4 **a formula that divides a vessel traffic projection or**

5 **really an assignment projection by a target workload.**

6 **Is that an accurate description?**

7 A. Correct. And specifically, a historical

8 assignment. Or in this case, I averaged.

9 So I chose, out of the four that I just

10 mentioned, I chose to use a historical analysis instead

11 of one of the other three options.

12 **Q. Okay. Now, in the case of what you did, was**

13 **there a specific policy or intent behind doing it, in**

14 **terms of was there any sort of goal behind determining a**

15 **number of pilots, or was it just to come up with a**

16 **number using a historic average without applying any**

17 **standards to that beyond just a pure average?**

18 A. I'm not sure I quite follow. Are you speaking

19 like there is a side motivation in making a

20 determination?

21 **Q. Not with that intent by any means, if that's**

22 **where you think I'm going.**

23 **What I mean is, for example, Dr. Khawaja's goal,**

24 **as I understand it, was to determine if all pilots**

25 **worked only while on duty, what would that look like?**

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1 **How many pilots would that be?**

2 **That way if you were trying to fund an on duty**

3 **pilot you know what each on duty pilot looked like.**

4 **I'm wondering if you had some sort of concept**

5 **you applied, or was it just historic average?**

6 A. If there was an underlying concept like that,

7 my -- my concept would be to make sure that we funded

8 each and every assignment or expected assignment, right,

9 since we're kind of working in a projection also,

10 equally and fully. And my analysis does that.

11 **Q. Okay. And so when you use the five-year**

12 **historic average, you -- I understand you use the years**

13 **2014 through 2018. Did you do anything to determine**

14 **what the impact of your analysis would be in terms of if**

15 **some portion of a pilot's work would be on duty versus**

16 **off duty?**

17 A. No. This treats all assignments as equal.

18 Acknowledging the fact -- the facts that Mr. Danny

19 Kermode already laid out in his testimony, where the

20 pilot received funds from shippers when they performed a

21 job. Whether it was an on duty job or whether it was a

22 callback job, that job generated tariffed revenue which

23 came -- or was paid to PSP. Right.

24 So my job was to say how much revenue or DNI

25 should go to each and every assignment. And I used the

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1 historical numbers to -- and then adjusted for inflation
 2 to do that.
 3 And callback jobs are included in my TAL because
 4 the revenue that was generated from doing those callback
 5 revenues is also in the DNI, as explained by
 6 Mr. Kermode.
 7 **Q. So when you determine the target assignment**
 8 **level base on the five-year average, my understanding**
 9 **your proposal is that this should be an exercise the**
 10 **commission would undertake and each does the rate**
 11 **proceeding.**
 12 **So if we came back -- and there was another**
 13 **general rate proceeding filed by PSP five years from**
 14 **now, the next five years is what you would examine and**
 15 **look at that period to determine what the target**
 16 **assignment level would be five years from now.**
 17 A. Correct. Because that would accurately reflect
 18 what work is being provided, what work is being done.
 19 **Q. By each of the actual pilots in that case;**
 20 **correct?**
 21 A. Well, I mean, we end up coming to an imply,
 22 right? So I imply and end up calculating, just for a
 23 round number I'll say 52. I know there's a small
 24 decimal on there.
 25 But in actuality, depending on which testimony

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1 with DR because times change and people come and go,
 2 there's 47 or 48 actual pilots I think we agree on right
 3 now currently.
 4 So I'm funding four extra positions by using the
 5 implied count. So I'm -- I'm calculating the labor
 6 costs for all jobs.
 7 **Q. Okay. And I -- I'm hoping to go in a little**
 8 **different direction. So let me word this a little**
 9 **better.**
 10 **Your average that you determined wasn't based on**
 11 **an implied count, it was based on the actual number of**
 12 **pilots because you look at each year. You see how many**
 13 **assignments were performed. You divide that by the**
 14 **number of pilots that were available, the actual**
 15 **licensed pilots to perform the work, and you came up**
 16 **with an average.**
 17 **And essentially, your average is the average of**
 18 **each of the years over five years; is that right?**
 19 A. The average assignments of each year, yes.
 20 **Q. So now, your proposal is if we came back and**
 21 **filed a rate proceeding in five years, there would be a**
 22 **new average based, again, on the actual licensed number**
 23 **of pilots in each of those five years; is that right?**
 24 A. No. It would be based off of the actual amount
 25 of work, which was performed on average.

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1 **Q. Sure. I guess my point, though, is -- at that**
 2 **point you recalculate the number of applied pilots using**
 3 **a new five-year average?**
 4 A. Yes. And let's say you came back next year. We
 5 would update it to the newest period. There would be
 6 some hangover to the period that I -- I have here. You
 7 know, maybe instead of '18, there's '19 or '20 info out
 8 there, and we add that on the end and calculate a new
 9 average. Yes.
 10 **Q. Okay. Now, the Board of Pilotage Commissioners,**
 11 **as we all know has authorized 56 licensed pilots. As of**
 12 **right now that's the authorized number.**
 13 **I can't -- and I don't think any of us can say**
 14 **when exactly there will be 56 licensed pilots. But let**
 15 **me ask you, if that were somehow to occur by the end of**
 16 **2021 and PSP came and filed a new rate proceeding in**
 17 **2022, at that point we're going to recalculate the**
 18 **target assignment level, using your method presumably,**
 19 **to determine the new implied pilot count.**
 20 **And in that situation there's only one year in**
 21 **which there were 56 pilots, and on a five-year average**
 22 **we still have an implied count well below 56; correct?**
 23 A. In your hypothetical, yes. But on the average
 24 that would be untrue.
 25 **Q. Okay.**

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1 A. But I -- I mean, I testified that there is a
 2 floor -- that there's a couple options that the
 3 commission has.
 4 Now, I have my method, because I believed it
 5 reflects the actual work being provided and fully funds
 6 it.
 7 If the commission chooses to shorten the period
 8 so the average reacts faster. They have the full power
 9 do that. But you're correct, 56 is the stated BPC
 10 authorized limit, and the Commission could choose to
 11 just use that number and fund that number. Or they
 12 could choose to actually say how many are there
 13 currently. There's 47 or 48. We'll fund that number.
 14 So they have plenty of options. I've chosen an
 15 option that I believe makes sure to fund each and every
 16 job equally.
 17 **Q. Okay.**
 18 A. And that's why I maintain my position.
 19 **Q. And that's fine. I'm not asking you to change**
 20 **your position. I'm trying to understand it a little**
 21 **better and how it would work over time.**
 22 **So I think -- would it be fair to describe using**
 23 **a five-year average as a method that would create**
 24 **regulatory lag in terms of averaging how many implied**
 25 **pilots there would be -- as things occur in realtime,**

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1 **that five-year average catches up very slowly.**
 2 A. Well, it catches up 20 percent at a time each
 3 year. The five-year average is a mechanism that, you
 4 know, I -- I believe is appropriate, because as you say,
 5 well, in a year or two, there could be 56 pilots.
 6 And while maybe that is true, there's plenty in
 7 this record to speak to the length it takes to become a
 8 licensed pilot, the years of licensing and testing
 9 requirements and training. So your number won't move
 10 quickly in my belief.
 11 **Q. But -- okay. Thank you. I think -- I think I**
 12 **understand.**
 13 **I need to move on a little bit and ask you next**
 14 **about the distributable net income number. And I'd like**
 15 **to start in sort of the same way. In determining a**
 16 **recommended distributable net income number, was there a**
 17 **specific goal that you set out to achieve?**
 18 **And actually, I heard from Mr. Kermode a little**
 19 **while ago, I assume you were on and listening, that he**
 20 **believes that there was a premium component in the rates**
 21 **that you've proposed. And I -- this is the part I**
 22 **didn't understand, and actually, maybe you can help me**
 23 **with.**
 24 **Was it his testimony in your understanding, that**
 25 **the distributable net income is supposed to be the**

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1 **amount distributed after revenue is deferred or paid out**
 2 **as additional funds to pilots who performed callbacks?**
 3 A. My proposal would do that if, and only if, PSP
 4 changed its bylaws to actually distribute it that way.
 5 So I think Mr. Kermode's comment would be
 6 accurate under the current PSP bylaws where they do not
 7 defer any revenue and they equally distribute all
 8 revenue. There would be that premium.
 9 If the bylaws were changed and GAAP accounting
 10 was implemented appropriately and deferred that revenue,
 11 then you would expect, in my case, 52 pilots at 143-ish
 12 jobs is just under 600 jobs. There's roughly 600 --
 13 I'll put air quotes around that because it's an
 14 estimate -- callback jobs funded right there.
 15 And that amount would be deferred in -- in the
 16 case where the GAAP accounting is implemented, and they
 17 would be expected if -- if that happened, that they
 18 would disburse the 402 to each of the 47 or 48 actual
 19 pilots, and the extra four would be cash aside to pay
 20 for the callback liability.
 21 So I think it determines -- it depends on which
 22 circumstances of bylaws the pilots are going to use.
 23 It's not really an effect here at the commission. In
 24 fact, it would be dangerous for the Commission to set a
 25 policy based on pilot bylaws, which are controlled by

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1 their owner members.
 2 **Q. Okay. So to understand a little bit better.**
 3 **In a hypothetical situation, let's say PSP on a**
 4 **going forward basis were to adopt a change. And now,**
 5 **every pilot who works a callback will receive either**
 6 **additional distribution at the time it's worked or that**
 7 **money will be deferred and it will be distributed at the**
 8 **time the callback is taken, removing the liability.**
 9 **Under this scenario, is it the intention of the**
 10 **DNI to be the -- basically, the remaining amount to be**
 11 **distributed. So that after a callback premium, each**
 12 **pilot would still be able to earn the DNI?**
 13 A. In the -- in the model that staff has proposed
 14 based off of projections, that's a theoretical reality
 15 we're aiming for. I mean, that's the target, right.
 16 **Q. Okay.**
 17 A. So --
 18 **Q. I just wanted to make sure I understood the**
 19 **concept. I don't think it was previously described that**
 20 **way, so I have a few questions to make sure I**
 21 **understand.**
 22 **Your vessel projection in how you got to it is**
 23 **something we can talk about later. But just in terms of**
 24 **using the number, you project 7,310 assignments for the**
 25 **rate year; is that right?**

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1 A. Yeah. You said 7300 and a couple? Yes, I
 2 believe that's -- the 3 -- 7310 I believe is the number.
 3 I believe I can reference my testimony. Oh, no, don't
 4 tell me. No, it's the PDF that's open. That would be
 5 in SS-1T, page 11, line 10. 7,310 is the vessel
 6 projection that I provided.
 7 **Q. Okay. Do you happen to have handy Exhibit IC-27**
 8 **of the Captain Carlson's callback assignments as a**
 9 **portion of the BPC assignment level table?**
 10 A. You said IC, you said 27?
 11 **Q. 27.**
 12 A. Let's hope the hyperlink works. I've got the
 13 whole list. I am opening that right now. Oh, come on.
 14 Of course, it is not opening. Wait, there is goes.
 15 Yes, I have it. Right now. Yes.
 16 **Q. Okay. Captain Carlson reports down to near the**
 17 **bottom of this big table, some details regarding the**
 18 **assignments worked in 2018. I believe you'll find them**
 19 **in the assignments column, there were 7,325 jobs in**
 20 **2018.**
 21 **That sounds like a pretty close number to 7,310.**
 22 **Would you agree with that?**
 23 A. In 2018?
 24 **Q. Yes.**
 25 A. Yes. His assignments.

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1 **Q. Do you see the next column over, callback jobs?**
 2 A. Yes, I do.
 3 **Q. And how many callback jobs were worked in 2018**
 4 **as a portion of that 7,325?**
 5 A. He has the number 1384 in there.
 6 **Q. Okay. Now, if you go further to the right, we**
 7 **have a column that says, "Total pilot." And I'll**
 8 **represent to you this includes the president, any pilots**
 9 **that are on major medical, any pilots that are burning**
 10 **callback page. This is the total number of licensed**
 11 **pilots according to PSP's financial statements.**
 12 **The number in 2018 was 50.3; is that right?**
 13 A. Correct.
 14 **Q. Okay. So if there are currently fewer than 53.3**
 15 **pilots actually licensed, do you think it is a fair**
 16 **expectation that they would have even more callbacks as**
 17 **a percentage of the total number of assignments?**
 18 A. I absolutely disagree with that.
 19 Callbacks are a -- a management issue in my
 20 opinion. It -- yes, they are going to occur. Yes, an
 21 average staffing model that -- I mean, because that's
 22 ultimately what staff is putting forward here with a
 23 historical analysis to base it off of. That number is
 24 going to fluctuate.
 25 By allowing an incentive for people to actually

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1 get paid to do a callback, on top of everything else.
 2 And then I believe that is what ultimately setting a TAL
 3 of 118, which is unachievable for the staffing levels,
 4 adding a premium on top of that as funding 62 pilots,
 5 which PSP proposes, would actually incentivize using
 6 more callbacks.
 7 **Q. My question --**
 8 A. Especially if you keep the current PSP bylaws in
 9 place, which evenly distribute the funds and don't defer
 10 the revenue.
 11 **Q. Okay. Mr. Sevall, I -- I hope I can ask this a**
 12 **little better.**
 13 **Assuming there were 7,310 assignments in the**
 14 **rate year and there were only 47 pilots, and nothing**
 15 **changed in the bylaws with respect to the dispatch**
 16 **system, the rotation system, pilots are still working**
 17 **181 days on watch. But of course, we're now talking**
 18 **about a hypothetical where they will distribute the**
 19 **money differently.**
 20 **My question was still just if you have fewer**
 21 **pilots in a period that had about the same number of**
 22 **assignments, wouldn't you expect there to be more work**
 23 **performed off duty?**
 24 A. No, absolutely not. It absolutely depends on
 25 the management, timing of ships.

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1 I mean, there's way too many variables in that
 2 to conclude that that is an absolute. And so I will
 3 maintain disagreement. It could decrease with effective
 4 management, possibly a queueing study, as staff has
 5 recommended previously, and disincentivize a callback.
 6 **Q. I'm sorry. My question was holding that equal.**
 7 **I understand your point about you could change**
 8 **management. My question is just if you didn't, would**
 9 **you expect there to be more callbacks with fewer pilots.**
 10 **But I'll move on.**
 11 **If you assume, instead, just for purposes of**
 12 **understanding how the callback premium would work, there**
 13 **were going to be 1,384 callbacks out of 7,310 jobs. Do**
 14 **you happen to have a calculator handy? Do you know what**
 15 **percentage of jobs that would be?**
 16 A. This will be off the top of my head, the literal
 17 top of my head. But I would estimate about 20 percent
 18 maybe.
 19 **Q. Okay, well --**
 20 A. Maybe 15 to 20 percent off the top of my head.
 21 **Q. Sure. I will represent to you that it's**
 22 **18.9 percent.**
 23 **For purposes of this question, will you accept**
 24 **that's the percentage that 1384 is out of 7310.**
 25 A. For that period, that historical period which is

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1 known as measurable, absolutely.
 2 **Q. Okay.**
 3 A. But a hypothetical going forward, I will not.
 4 **Q. Okay. Fair enough.**
 5 **For -- you said that one of the goals of your**
 6 **target assignment level and your DNI is to make sure**
 7 **that every single assignment is worth the same amount;**
 8 **is that right?**
 9 A. Correct. That -- that they are absolutely
 10 equally funded.
 11 **Q. Okay. Now, if you took that 18.9 percent and**
 12 **multiplied it by your total DNI, which -- do you recall**
 13 **off the top of your head what your recommended total DNI**
 14 **number was?**
 15 A. It was -- it was about 143.something. So we
 16 could just for sake of ease, we could agree on for this
 17 discussion to go to 143 just to -- just to --
 18 **Q. I'm sorry. In your -- in your cross-answering**
 19 **testimony, I think you testified that you're recommended**
 20 **total DNI is 20,836,161. Does that sound right for the**
 21 **total DNI?**
 22 A. Oh, sorry. You were speaking DNI. I was on TAL
 23 for some reason. I'm sorry. It was 143. Sorry.
 24 Total DNI, I can -- I can grab that right now.
 25 And cross answer. I'm going to Exhibit SS-2R2. Because

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1 this has had a couple revisions.
 2 Total distributed income is on line 15, and I
 3 listed at 20,836,161.
 4 **Q. Okay. Thank you.**
 5 **Now, if I understand your goal here correctly**
 6 **that every assignment should be worth the same amount.**
 7 **If we're going to come up with the value of the callback**
 8 **premium that's included in that total DNI, wouldn't we**
 9 **basically do something like multiply that 18.9 percent**
 10 **which represented the percentage of the total jobs that**
 11 **were callbacks times your total DNI?**
 12 A. No, that would be incomplete.
 13 You would have to actually jot down TAL for that
 14 amount of callback, since I have callbacks in my TAL and
 15 revenue. So you can't just adjust revenue. You have to
 16 adjust TAL also.
 17 And if each average -- if each average pilot is
 18 working less and each job is equally valued, then the
 19 normal work would be funded at -- for doing less work.
 20 **Q. Mr. Sevall, in this situation, we're still just**
 21 **talking about the percentage of the total DNI you**
 22 **calculated that represents the value of the callback**
 23 **work.**
 24 A. Well, in my -- in my -- my model, I have
 25 600 days of callback roughly, right; because I'm funding

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1 4 positions more than there are actual pilots.
 2 JUDGE HOWARD: This is Judge Howard. I need
 3 a clarification. Just to clarify, I might be the only
 4 person thinking this, but did -- Mr. Sevall, did you
 5 refer to 20,000 for your total DNI figure when you
 6 referenced that exhibit, or was it 20-million something?
 7 THE WITNESS: It was 20.8 million.
 8 JUDGE HOWARD: Okay. Just making sure.
 9 Please proceed.
 10 BY MR. FASSBURG:
 11 **Q. Thank you.**
 12 **So what you last said, Mr. Sevall, may need a**
 13 **clarification.**
 14 **You're talking about the callback premium not as**
 15 **being something based upon the number of callback jobs**
 16 **actually worked based on reality, but based on the**
 17 **difference between the number of licensed pilots and the**
 18 **implied number of pilots?**
 19 A. Correct. I mean, that -- that would be the
 20 estimated number, because my model also works off the
 21 historical average that everybody would, for lack of a
 22 better term, pull equal weight, right? That would do
 23 143 jobs.
 24 Now, if there was a callback liability, let's go
 25 with ease of 1,200 callback days, that means the average

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1 really isn't 143. It means pilots worked less, which
 2 should mean pilots get paid less. You should get paid
 3 for the amount of work you are doing.
 4 **Q. Mr. Sevall, with respect to your assignment**
 5 **level of 143.4 that you are using to determine the**
 6 **number of implied pilots. You recognize that in reality**
 7 **there's a portion of those that are callbacks; that in**
 8 **the real world those were not jobs performed by a pilot**
 9 **who was on watch. Those were pilots who were off watch**
 10 **and came back and worked a callback?**
 11 A. Correct.
 12 MR. FUKANO: Objection. Counsel is
 13 testifying.
 14 MR. FASSBURG: It's a leading question. I'm
 15 allowed to ask that.
 16 JUDGE HOWARD: I'll allow Mr. Fassburg to
 17 finish the question. I'm not sure he totally finished
 18 his question at that point.
 19 Please, Mr. Fassburg, would you remind
 20 restating it or repeating yourself, or should we have
 21 the court reporter read it back.
 22 It is unclear to me if you were done.
 23 MR. FASSBURG: You know, its fine. We can
 24 go back to Exhibit IC-27.
 25 Mr. Sevall, you would agree with me, that

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1 based on the information here in Exhibit IC-27 what
 2 actually happened during the five-year average was not
 3 143.4 on watch assignments.
 4 And if we look at what happened in 2019,
 5 there were 143.1 assignments, of which only 115 were on
 6 watch per pilot, which left 28.2 callbacks per pilot.
 7 That's what actually happened.
 8 And so what I'm trying to understand is when
 9 you talk about a callback premium in your -- in your
 10 TDNI, it is based on the difference between the actual
 11 number of licensed pilots in the implied count that
 12 you've determined.
 13 THE WITNESS: The -- the difference would be
 14 the premium if everybody actually did 143. If everybody
 15 were to do a lower amount, like 115, then you would have
 16 to increase that difference. Because in reality, the
 17 individuals that do 115 did less work. So the premium
 18 would increase. Every -- every job could shift money
 19 between the callback liability deferral or going into
 20 distribution.
 21 BY MR. FASSBURG:
 22 **Q. Okay. Now, if -- if we're talking about pilots**
 23 **who are actually licensed increasing over time, as we --**
 24 **I was talking about a little while ago.**
 25 **Let's say in a couple years we do, indeed, get**

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1 to 56. And PSP has not come in for a new general rate
 2 proceeding, so we're under your 143.4 as a target
 3 assignment level.
 4 At that point the number of implied pilots,
 5 assuming the assignment level, the total number of
 6 assignments have remained the same. There's no longer
 7 any premium for callbacks at that point, wouldn't that
 8 be true?
 9 A. There should also be no callbacks. There should
 10 also be -- and if the TAL dropped -- if you had 56
 11 pilots and everyone was actually working less, then yes,
 12 their pay would decrease.
 13 Q. Now, did you read Dr. Khawaja's simulation in
 14 which he determined that even at 61 pilots there still
 15 would be callbacks being worked?
 16 A. Well, that's his simulation off of a TAL of 118
 17 which is unachievable. In fact, I believe it's been --
 18 or hasn't been even taken up over at the BPC, and that's
 19 a safety argument. And that safety argument belongs
 20 over at the BPC and not here.
 21 Q. Mr. Sevall, my question is a little different.
 22 I hope we can -- I hope I can be clearer.
 23 Dr. Khawaja estimated that even if there were 61
 24 actual pilots working, that there would still be
 25 callbacks because of the peaks in traffic. And you

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1 can't actually cover all of the assignments on all of
 2 the peaks even with 61 actual pilots.
 3 And so my question is, if you got to 56 and
 4 there was no more callback premium within your rates,
 5 but there are still, in fact, callbacks being worked, is
 6 PSP still expected to defer revenue related to those
 7 callbacks in staff's proposal?
 8 A. I would hope that PSP would file a rate case,
 9 like we would expect any other general -- any other
 10 company we regulate that says, look, we have costs
 11 increasing and labor changes and we need to address
 12 them. That's what I would expect.
 13 Q. Okay. Now, I would like to go to your Exhibit
 14 SS-2, the -- the first version of that, if you would.
 15 A. SS-2 very first version. So there is -- that's
 16 before I correct the callback error; correct?
 17 Q. That would be the version.
 18 A. First version, initial. We're going there.
 19 Okay, I have that open.
 20 Q. Okay. In that version you calculated what you
 21 called in your initial testimony as something -- I think
 22 you called it a callback adjustment.
 23 Can you explain what the purpose of your
 24 callback adjustment was?
 25 A. Correct. So you're talking about schedule -- in

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1 that exhibit you're talking about on schedule 2.3;
 2 correct? I just want to make sure that all the
 3 Commissioner's, whoever is going to be looking at this,
 4 now, which schedule in this exhibit we're looking at.
 5 Q. Yes, thank you.
 6 A. And it would be line number 16, is that the one
 7 you're referring to?
 8 Q. I -- well, I think that's a place to start. On
 9 line 16, if I understand correctly, what you did there
 10 was you multiplied the number of jobs that were worked
 11 as callbacks by the average net income per assignment;
 12 is that a fair statement?
 13 A. Correct. We took the average distributable
 14 income per assignment and took that against what I
 15 believe PSP had provided -- I reference it over there,
 16 the DR set -- of how many callback days have been put
 17 in -- in -- or used, or reported in that day. And
 18 calculated a value of it, basing off the -- that one
 19 callback would have one assignment.
 20 That is the assumption in there. That may not
 21 be one hundred percent, but this was an estimate.
 22 Q. But the concept there was not a delta between an
 23 implied pilot count and actual pilot count. You were
 24 looking at the number of callbacks actually performed in
 25 the real world, multiplied by the number of the average

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1 net income per assignment; correct?
 2 A. Correct.
 3 And so on its face, like minus that one
 4 assumption I believe that's in this, this is the amount
 5 in these years that PSP should have deferred for the
 6 callbacks that were incurred in that time. That's what
 7 this number really represents. It's an estimated
 8 callback liability that was incurred at that time that
 9 was not deferred. That's what I was trying to do.
 10 Q. Okay. And so in your methodology that you
 11 applied there, to determine the value of callbacks, they
 12 were treated equally to all other assignments in terms
 13 of you applied an average net income per assignment
 14 multiplied by the number of callbacks; is that right?
 15 A. Correct. I believe it says over in the source
 16 column exactly what math was occurring.
 17 Q. Now, in this table, the callback adjustment that
 18 you made was you went ahead and subtracted that amount
 19 from what the total -- I'm sorry, the DNI total would be
 20 and from the DNI pilot; is that right?
 21 A. Yes. I believe I -- I totaled it and then
 22 divided it again, as the math is over in the source
 23 column.
 24 Q. Okay. And in your original proposal for what
 25 the total DNI would be, you had subtracted this amount

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1 from the DNI. And then you -- the DNI amount that you
 2 calculated, you multiplied by a number of implied pilots
 3 determined by 143.4 assignments to come up with the
 4 total DNI; is that right?
 5 A. Well, yeah. Then I -- I -- I take line 19 and
 6 take the average, and I push that forward into schedule
 7 2.1. And you -- you can very plainly see the math, its
 8 sourced.
 9 **Q. Okay. Now, you discovered that there was a**
 10 **problem with this model some time after your response**
 11 **testimony was filed; is that right?**
 12 A. I -- I discovered a couple. And I filed
 13 supplemental.
 14 **Q. And specifically with respect to the callback**
 15 **adjustment, what was it that you discovered that was an**
 16 **error that you wanted to correct?**
 17 A. Well, this was reducing the -- the DNI in the
 18 year for -- for callback value, right, shown on line 16
 19 of schedule 2.3.
 20 And I had not made an adjustment down in
 21 schedule 2.1, adjusting down the average assignment. So
 22 I had -- I had left in -- and I believe I say this in my
 23 supplemental, or at least the point of my supplemental
 24 is that the callback assignments, themselves, had not
 25 been stated out of the average assignment per pilot, and

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1 so I had left callbacks in and taken callbacks out.
 2 So in accounting we love things to balance, so I
 3 had inadvertently unbalanced it. So there's two ways to
 4 rebalance it. One would be to create an adjustment on
 5 2.2, or to remove the adjustment from 2.3, and I chose
 6 the latter.
 7 **Q. Okay. And so what you did was basically you**
 8 **discovered there was an error that was reducing the**
 9 **amount of money by which you were multiplying the**
 10 **implied number of pilots, and you restored that; is that**
 11 **right?**
 12 A. I -- I reversed an adjustment that I had
 13 originally proposed.
 14 **Q. Okay. All right. I'd like to move on a little**
 15 **bit.**
 16 **And I don't need to turn to it. We can continue**
 17 **looking at schedule 2.3 in SS-2 for the next few**
 18 **questions I have for you.**
 19 **When you were determining the amount each pilot**
 20 **would earn as a DNI using this spreadsheet, was there**
 21 **any policy or goal that you applied here to determine,**
 22 **you know, what a pilot ought to get paid?**
 23 A. I already stated that it was to fund each and
 24 every assignment. And so if you follow the math from
 25 top to bottom in schedule 2.3, I -- especially in the

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1 new model, where I reversed the error and balanced it.
 2 I recognized callbacks were reported in the average TAL,
 3 and that the value of the callbacks, the revenue that
 4 was generated by those callbacks did, in fact, pass
 5 through the association's hands and was not deferred.
 6 So it was already distributed like Mr. Kermode testified
 7 to.
 8 And so it dawned on me to -- that all
 9 assignments have an equal average value there. So I
 10 take line 6, and that's -- that line 6, which is the DNI
 11 per assignment, right, that's true -- that's the average
 12 assignment value in DNI, whether it's a callback,
 13 whether it's an on watch, whether it -- it doesn't
 14 matter. It's an assignment, and that's a value. And
 15 that's historical fact. So I mean, it is undeniable.
 16 And when we multiply that forward, we make sure
 17 we fund every single assignment. It doesn't matter the
 18 nature of the assignment. And it flows into TDNI and if
 19 goes into the tariff rate and the hourly rate, and when
 20 the shippers pay that hourly rate they will hour for
 21 hour reimburse the assignment costs on each and every
 22 assignment.
 23 And if workload does actually increase, if you
 24 do get 56 pilots and workload does increase or it
 25 decreases, by funding it at the assignment level,

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1 breaking this down to the assignment level and then
 2 bringing it back up to a pilot level, and breaking it
 3 down to an hourly level, we make sure it doesn't matter
 4 how many assignments or how long they are, the pilots
 5 have received the adequate distribution for their work
 6 in -- in macro.
 7 How they distribute it in their bylaws, they can
 8 distribute how they want. But this is how I think the
 9 commission should apply their rate making policies.
 10 **Q. Okay. Now, you said a work in there I think is**
 11 **kind of key. You said this would be an adequate**
 12 **compensation for the work.**
 13 **So has the commission ever used a historic**
 14 **average of earnings by a regulated company to determine**
 15 **the adequate compensation for a company?**
 16 A. Well, a lot of our others, in fact, I'll say all
 17 of our other regulated companies, the sole labor is not
 18 the MSK, I'll use 48 owners that provide the primary
 19 labor.
 20 So this is unique. So I would -- I would go out
 21 on the limb that probably not.
 22 **Q. Okay. And in fact, when looking at a hybrid**
 23 **test here, obviously, the commission doesn't normally**
 24 **use five-year averages. I'm sure you would agree.**
 25 A. Are you talking about on the pro forma income

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1 statement, the historical test year that's been
 2 adjusted?
 3 **Q. Sure. Actually, I probably should have led that**
 4 **in with a different question.**
 5 **My understanding from your initial testimony was**
 6 **that you articulated one of the reasons you took this**
 7 **approach was it was consistent with traditional rate**
 8 **making. You even cited to a decision relating to**
 9 **electrical power utility, and there I think your**
 10 **citation was to hybrid test year approach.**
 11 **Did I -- did I state your testimony about that**
 12 **correctly?**
 13 MR. FUKANO: Can you direct the witness to
 14 the cite?
 15 MR. FASSBURG: I would be happy to. It
 16 would take me a moment.
 17 THE WITNESS: That's the PSE order I
 18 cited -- it should be in 1T.
 19 BY MR. FASSBURG:
 20 **Q. I think that's right.**
 21 A. It's been money months since I -- since I
 22 worded -- but I believe they mean basically the same
 23 thing so.
 24 **Q. Okay. So -- if we need to search for it, we**
 25 **can. It was your initial testimony that one of the**

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1 **bases for adopting this approach was because it was**
 2 **similar, you believe to the hybrid test year approach?**
 3 A. Well, it uses historical norms. Right now in
 4 the pro forma income statement, as Ms. LaRue testified
 5 to, she's focused on the historical test period, right?
 6 Now, my job in looking at compensation, I
 7 guess -- maybe I missed it entirely earlier in the other
 8 one -- is to smooth things out. We use amortization,
 9 like legal fees in this example that she testified to,
 10 and she amortized them.
 11 I take this five-year average as a similar
 12 method -- kind of, kind of based off that same idea,
 13 that part of -- part of regulation is to compensate or
 14 work out the -- the peaks and valleys that naturally
 15 will happen in business life cycles.
 16 **Q. Sure. And when this case, though, as opposed to**
 17 **expenses, what you were looking at was trying to**
 18 **determine an amount by which labor would be compensated**
 19 **for owners; is that right?**
 20 A. Yeah, TDNI is basically compensation to the
 21 pilot who were member owners, correct.
 22 **Q. So there's no similar concept like that in**
 23 **hybrid testing approach related to power utilities. I'm**
 24 **sure you would agree?**
 25 A. Yes. PSP is not -- not owned, nor is all the

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1 labor done by the owners of the company.
 2 **Q. Now, if -- or a power utilities like PSP, if you**
 3 **were to determine its appropriate rate of return based**
 4 **on the five-year average of its earnings divided by some**
 5 **unit of output for the utility, it would never be**
 6 **entitled to a rate increase, would it? You would just**
 7 **keep giving it back what it was earning before?**
 8 A. Well, it adjusts this for inflation, so the
 9 numbers are increased.
 10 **Q. They are increased by present value relative to**
 11 **a number historically earned. But the idea is you are**
 12 **still just going to earn what you already were. There**
 13 **is no basis by which you could determine a need for an**
 14 **increase if you just constantly use a five-year historic**
 15 **average; is that right?**
 16 A. If -- if that's your sole input and it never
 17 changes, possibly.
 18 But the other way that this could work is
 19 efficiency comes in. And instead of having more, you
 20 could drive DNI up. I -- I mean, it all comes down to
 21 the -- the pilots being true and efficient owners and
 22 not just saying we -- we have a fatigue model, which
 23 hasn't been accepted by the appropriate board yet. And
 24 we're going to take that and ask for the money that that
 25 thing says. Right?

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1 I mean, that's one way to increase DNI. But
 2 another way would be to actually gain some efficiencies
 3 and maybe you could increase your DNI. It all comes
 4 down to how much work someone is willing to do and the
 5 efficiency of the operation.
 6 **Q. Now, when you were investigating potential**
 7 **methods by which to determine the DNI, did you do**
 8 **anything to investigate what's done by pilotage rate**
 9 **setting authorities in other jurisdictions?**
 10 A. Well, I already said four methods that -- that
 11 I've found were used. You know, LA has a union
 12 contract. PSP has previously been in a supplemental
 13 agreement, right, with the MOU. So -- and we are -- as
 14 I already went through, you know, there's a
 15 comparability analysis out there, and there's historical
 16 adjusted. I used historical adjusted.
 17 **Q. In what other rate setting jurisdictions for**
 18 **pilotage tariffs do they use a historic average for**
 19 **determining the DNI?**
 20 A. What RCW in Washington requires us to.
 21 **Q. Well, I think you just said that when you did**
 22 **your investigation you discovered that was one of the**
 23 **methods. I'm just asking you if that was a method you**
 24 **discovered in any other jurisdiction.**
 25 A. I believe Great Lakes, which is set by Coast

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1 Guard. Mike Moore was talking to it earlier, I believe,
 2 where they do a -- they used comparable -- actually, it
 3 was rejected. I can't remember.
 4 But let's see, Oregon, in order -- and that's an
 5 exhibit in here. Let me go find that, right. I believe
 6 that's a cross exhibit. Oregon's order O-10-01. I
 7 believe they refused to accept PSP and San Francisco as
 8 being proxies or comparables, and they are more
 9 interested in the parody between the bar pilots on the
 10 Columbia and the lower river Columbia pilots.
 11 So there's -- there is an example of the idea of
 12 being rejected, I guess, if -- if you want.
 13 **Q. My question was a little different. But isn't**
 14 **that actually an example of using a proxy that just**
 15 **simply isn't Puget Sound. They used as a proxy the**
 16 **Column River Bar, didn't they?**
 17 A. They -- they state in the order. I believe it's
 18 actually stated that they are more interested in the
 19 parody of pilotage compensation within their
 20 jurisdiction, which is Oregon.
 21 **Q. Sure. And so you said the Great Lakes uses a**
 22 **comparable, too, I think I heard you say. The Great**
 23 **Lakes uses a comparable that I believe is in the middle**
 24 **of litigation.**
 25 **Did you find any other jurisdictions that use an**

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1 **historic average for determining the DNI as opposed to a**
 2 **comparable?**
 3 A. Well, you can testify it is hard to find, one,
 4 financial information, which I will say that's true.
 5 But second, determinations from people on how to
 6 actually determine it.
 7 I know that comparability is used. I didn't
 8 find another historical average, but I know that that is
 9 a solid method that this commission has employed, will
 10 continue to employ in other regulated entities. And I
 11 believe it's fitting.
 12 So we're not tied to other jurisdictions and
 13 what they do.
 14 **Q. Understood. I'm just asking about what you**
 15 **found.**
 16 **Now, with respect to executive compensation as**
 17 **an example. How did this Commission determine what's an**
 18 **appropriate amount for executive compensation?**
 19 A. Well, I believe that there's an actual salary
 20 study put forth.
 21 **Q. And that looks at --**
 22 A. I haven't -- first, caveat, that I have not been
 23 a witness in a PSE or Avista or any power case as far as
 24 GRC which involved setting the CEO compensation.
 25 So my -- my hands on knowledge, I will say, is

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1 extremely limited in that fashion. But they -- they can
 2 absolutely look at a salary study.
 3 **Q. Okay. Thank you.**
 4 **I'd like to move on just a little bit, and I**
 5 **think we can probably hurry this along to the**
 6 **conclusion. I realize we've probably been dragging just**
 7 **a little bit. Hopefully, this will be not be very long.**
 8 **You had a change in recommendation with respect**
 9 **to whether or not the vice president should be funded in**
 10 **rates as an administrative pilot. I'm wondering, did**
 11 **you by chance find in that Oregon order that you**
 12 **referenced that in the Columbia River they actually have**
 13 **two administrative pilots they funded rates?**
 14 A. Was that order 10-01?
 15 **Q. Yes.**
 16 A. I don't remember it offhand. If you can point
 17 me to that. I forgot exactly --
 18 **Q. I would be happen to.**
 19 A. -- what cross-exhibit that is?
 20 JUDGE HOWARD: Is that Exhibit SS-10X?
 21 MR. FASSBURG: I believe it is.
 22 Unfortunately, mine is not labeled. I have to go to my
 23 exhibit list. But it's -- yeah, I'm sorry. I don't
 24 have my exhibit list open to give you the number. I
 25 wish I did.

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1 THE WITNESS: I think I inadvertently closed
 2 mine. So let's take a moment and go reopen those.
 3 MR. FASSBURG: And it is indeed SS-10X.
 4 THE WITNESS: SS-10X?
 5 MR. FASSBURG: Yes.
 6 THE WITNESS: I swear I just looked at it
 7 and didn't see it then. Sorry about that.
 8 Oh, it is a long list. All right, 10X.
 9 Give me just one moment.
 10 All right. Just to make sure, so it was
 11 issued May 19, 2010?
 12 BY MR. FASSBURG:
 13 **Q. I believe that's right. If you will please go**
 14 **to page 13 and 14.**
 15 **Are you there?**
 16 A. Almost. My computer got a little choppy on
 17 here. It was like I was moving forward but it wasn't
 18 moving.
 19 Okay. At 12, I'm at the top of 13. It says,
 20 "Ordering closets."
 21 **Q. There you go.**
 22 **Would you please read Item No. 2.**
 23 A. "For the purposes of setting the tariff, the
 24 number of FTE pilots is 43, of which two shall be
 25 designated as administrative pilots."

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1 **Q. Thank you.**
 2 **Were you aware that there are multiple**
 3 **jurisdictions, including Oregon, that have authorized**
 4 **pilots to have two administrative pilots due to the**
 5 **level of administrative workload the piloted association**
 6 **requires?**
 7 A. Actually, no. I -- I wasn't aware. Even though
 8 I have read this order several times, I don't think that
 9 that -- that changes anything I'm recommending.
 10 Because I -- I do believe a lot of the work that
 11 was listed in the exhibits earlier that Mike Moore spoke
 12 to, and -- and Chairman Danner discussed with Captain
 13 Carlson seems quite temporary in nature, honestly, and
 14 it's been a long policy in Washington to have one, and I
 15 think the commission could maintain that.
 16 So they have a choice on their hand. My
 17 recommendation is one. Your recommendation is two. And
 18 they are going to have to choose.
 19 **Q. Understood.**
 20 **By any chance, did you review the San Francisco**
 21 **pilot fatigue study that was in our exhibits as well, I**
 22 **believe that -- I'm sorry. I did open the exhibit list,**
 23 **but I need to get to it.**
 24 A. San Francisco. It's SS-11X, I believe. I
 25 started to read. I'm not sure I got all the way through

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1 it.
 2 **Q. No worries. And we're only -- I'm only looking**
 3 **for one specific item here, and it won't take long for**
 4 **us to get to it.**
 5 **Would you mind going to page 19.**
 6 A. Okay. It's loading. It's 137 pages; that's why
 7 I didn't get through it in time.
 8 **Q. Understood. I only read it once myself, I**
 9 **believe.**
 10 A. Is that page 19 of 37 in the header, or is it
 11 the bottom Page Number 19?
 12 **Q. I believe it is in the header.**
 13 A. Okay. So I'm on the one that says, it starts at
 14 the top, it says: To name the most hazardous events.
 15 **Q. Yes, there you go. Would you go down to the**
 16 **very bottom paragraph of that page.**
 17 A. Okay. The one that starts with, Eight bar
 18 pilots.
 19 **Q. There you go.**
 20 **So I'll go ahead and read that for the record.**
 21 **It says, "Eight bar pilots are designated as operations**
 22 **pilots. Days or weeks before a vessel move, these**
 23 **pilots work with nautical charts, tidal data information**
 24 **on the ship's characteristics, and the other material**
 25 **necessary to coordinate and plan the move.**

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1 **"Operations pilots can expect to work one week**
 2 **out of four at the bar offices. Although, they are on**
 3 **call 24 hours a day, most of their work is carried out**
 4 **during business hours on each of their seven-day**
 5 **workweek.**
 6 **"During their remaining work period, the**
 7 **operations pilots all the normal pattern of a pilot on**
 8 **the board."**
 9 **If there are eight pilots, each working one out**
 10 **of four weeks, sounds like there's roughly the**
 11 **equivalent of two administrative pilots. Does that**
 12 **sound about right?**
 13 A. Well, it one, doesn't mention that they're
 14 administrative pilots specifically. And it is just
 15 talking about an operation.
 16 Funding and operations are totally different. I
 17 mean, as Danny Kermode spoke to about we distribute --
 18 or how PSP distributes funds by their bylaws. It
 19 shouldn't necessarily change how the regulatory body
 20 works or implements policy.
 21 **Q. But other than this information I presented now,**
 22 **I suspect you have not come across any information with**
 23 **respect to what type of administrative workload is**
 24 **required of pilots in pilot associations around the**
 25 **country?**

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1 A. Well, if we were to bring this forth, I believe
 2 PSP provided what they call comparables. Right now I
 3 would call this incomparable. But because they failed
 4 to lay out a clear methodology in their comparisons on
 5 how things were comparable, how they weren't comparable
 6 from operations clear through compensation. I couldn't
 7 make a determination on anything from their
 8 comparability.
 9 **Q. Okay. Thank you.**
 10 **I think I have just a couple more questions.**
 11 **You did note in your initial testimony that one thing**
 12 **that you felt was missing from PSP's presentation on**
 13 **comparable pilot income was cost of living.**
 14 **And you would agree with me that between**
 15 **Washington, Oregon, California, Louisiana and Florida,**
 16 **Seattle is second to -- I'm sorry, Seattle is second to**
 17 **San Francisco in cost of living. Wouldn't that be**
 18 **right?**
 19 A. I don't have that information, so I can't make a
 20 clear determination.
 21 But that -- that should be a -- a thing brought
 22 into comparability. And I didn't see it listed at all
 23 in any of the charts or tables which PSP provided in
 24 their comparability study.
 25 In fact, I asked data request. And data request

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1 DR-88 to Captain Quick, which is for his table in his
 2 rebuttal -- or response testimony, I forget exactly the
 3 correct word for that. The very first sentence says he
 4 doesn't have the information.
 5 And that was pertaining to the DNI. So he
 6 couldn't even tell me what expenses made up DNI. So it
 7 kills the table. I mean, that table is useless. I
 8 can't go any further.
 9 So my analysis there of that information stops.
 10 JUDGE HOWARD: Mr. Sevall, I think we are
 11 going a little bit past the question at this point.
 12 MR. FASSBURG: And I have no further
 13 questions. Thank you.
 14 JUDGE HOWARD: Mr. Fukano, do you have any
 15 redirect?
 16 MR. FUKANO: Yes, Your Honor. Some brief
 17 redirect.
 18 REDIRECT EXAMINATION
 19 BY MR. FUKANO:
 20 **Q. Mr. Sevall, can you turn to what has been filed**
 21 **as Exhibit WT-02.**
 22 A. Let me get that sheet back open again. WT?
 23 **Q. Yes.**
 24 A. Which -- which party, is that PSP witness?
 25 **Q. Yes, I think it's Captain Tabler?**

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1 A. Why I'm not finding it here. Nope, that's WTB.
 2 Sorry.
 3 COMMISSIONER RENDAHL: This is Commissioner
 4 Rendahl. I think it is early in the exhibit list.
 5 THE WITNESS: WT, okay. Thank you. Which
 6 number?
 7 BY MR. FUKANO:
 8 **Q. Number 2. And I think it may be a composite**
 9 **exhibit. So it would be page 8 of the composite in the**
 10 **PDF.**
 11 A. Copy and open. Sorry about my slowness
 12 everyone. It's okay.
 13 What have we got? Okay. I am on the very first
 14 page. It says the WT-02 and joint proposal for tariff
 15 adjustment.
 16 **Q. And would you please go to page 8 of the PDF.**
 17 A. Is that where it speaks to -- it's got line 27,
 18 it says, and an example of the application of the vessel
 19 traffic formula?
 20 **Q. No. It should have an equation on it. The**
 21 **first full section is Section 3?**
 22 A. Section 3, annual tariff adjustment?
 23 **Q. Yes, that's the correct page. Above that**
 24 **section there is an equation; correct?**
 25 A. Correct. Says 82, 62 projected assignments,

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1 divided by 149 assignments.
 2 **Q. And what are the number of pilots discussed in**
 3 **that equation?**
 4 A. It takes the projected assignments divided by
 5 the 149 and equals 55.45 pilots, and then add one for
 6 the president and equates to 56.45 pilots.
 7 **Q. And how do you interpret the additional one**
 8 **reflected by the president in that equation?**
 9 A. Well, I guess -- it says president, so to fund
 10 the president position or administrative position pilot,
 11 you know, whatever you want to call it. I'm not sure.
 12 **Q. And who were the signatories of this agreement**
 13 **or this memorandum?**
 14 A. I am scrolling down. We'll see if it's on
 15 there. But this looks like it is the MOU. So it's
 16 between the previous iteration of PMSA, so it is Polar
 17 Tankers, Inc., Puget Sound Steamboat Operators
 18 Association and Puget Sound Pilots.
 19 **Q. In preparation of this case, did you review**
 20 **cases pertaining to Coast Guard regulation of pilotage**
 21 **of the Great Lakes?**
 22 A. Previous, no. I only just actually became
 23 aware.
 24 **Q. Earlier in your --**
 25 A. Sorry, go ahead.

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1 **Q. That's all right.**
 2 **Earlier in your cross, you stated that safety**
 3 **arguments belong at the BPC and not here; is that**
 4 **correct?**
 5 A. As my understanding of the jurisdiction that the
 6 legislature gave to the -- this Commission, is that we
 7 only have rate making authority. And that licensure and
 8 safety of pilotage falls underneath the BPC, and fatigue
 9 is very clearly a safety issue, not a rate making issue.
 10 **Q. During this proceeding you filed revisions to**
 11 **Exhibit SS-2; is that correct?**
 12 A. Correct. I believe I filed three revisions in
 13 total.
 14 **Q. Are you continuing to rely on your initially**
 15 **filed SS-2, in this case?**
 16 A. No, I am not. I am relying on the one now
 17 labeled SS-2R2 to make my recommendation.
 18 **Q. And -- and to clarify, which -- which**
 19 **methodology does staff pursue with regard to determining**
 20 **variables for the rate equation in this case?**
 21 A. Historical knowns adjusted or average.
 22 MR. FUKANO: Thank you. No further
 23 questions at this time.
 24 JUDGE HOWARD: I see that PMSA has also set
 25 aside cross-examination time for this witness.

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1 Ms. DeLappe, would you like to proceed?
 2 MS. DeLAPPE: Thank you.
 3 Just a few questions for you, Mr. Sevall.
 4 Good afternoon.
 5 THE WITNESS: Good afternoon.
 6 CROSS-EXAMINATION
 7 BY MS. DeLAPPE:
 8 **Q. Mr. Sevall, in your recommendation, just make**
 9 **sure I understand correctly. Larger vessels would pay**
 10 **more than smaller vessels, if for the same pilotage**
 11 **service on the same routes and ports and time; right?**
 12 A. I believe that is -- is absolutely true.
 13 **Q. And do you agree, then, with PSP testimony that**
 14 **the staff recommendation ignores big ship risk?**
 15 A. Exactly which testimony did they say -- I just
 16 want to make sure I'm not --
 17 **Q. Sure.**
 18 **It's in the rebuttal testimony. So -- so it**
 19 **sounds like you were -- you were maybe looking at the --**
 20 **there was a critique specifically of your testimony.**
 21 A. Is that Steven Moreno's SM-2T?
 22 **Q. Okay. Good. I was forgetting who exactly who**
 23 **that was. So let me pull that up.**
 24 A. It says in this table of contents, Risk as a
 25 factor in establishing rate design. So I believe -- I

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1 believe that --
 2 **Q. Let's turn to that.**
 3 **And yes. He names you by name, and discusses,**
 4 **it looks like it's around page 3 of his testimony about**
 5 **that -- he does not believe that you were accounting for**
 6 **the element of risk associated with larger vessels.**
 7 **Is that -- is that reading the same as yours of**
 8 **that testimony?**
 9 A. I believe that's a general gist.
 10 I don't know if he fully acknowledges that we
 11 don't account for risk. But he definitely doesn't think
 12 we've acknowledged it to the extent that he has.
 13 **Q. And so my question for you is, do you just -- do**
 14 **you feel even after reading that, that you have**
 15 **sufficiently accounted for the risk involved with large**
 16 **ships?**
 17 A. I -- I absolutely do believe I have.
 18 Staff, prior to this general rate case, actually
 19 went on a -- a pilotage excursion where that 14,000 TEU
 20 ship that went down the Blair Waterway, staff member
 21 were on that. And there were three pilots, three pilots
 22 on it. And they were there because of risk. I one
 23 hundred percent believe that.
 24 And in this tariff design that means there would
 25 be three hourly pilot charges for every hour that each

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1 pilot was on there. So that's three times the hourly
 2 rate, because we're funding each one's labor. So if
 3 they were on there because it was risky and they're
 4 getting -- and the ship's getting billed because they
 5 are on there, then they are paying for the risk.
 6 **Q. And even if there are not three pilots, there is**
 7 **an increase in the tariff based on tonnage such that**
 8 **larger ships do pay more than smaller ships, if you just**
 9 **look at the two ships on the same route, same time, same**
 10 **ports; correct?**
 11 A. I believe that -- that's correct, with my --
 12 with my rate, rate analysis that I -- that I provided.
 13 **Q. And once established, would it be arbitrary for**
 14 **Commission Staff to further advise its owed proposed**
 15 **tonnage rate to shift burdens amongst vessels to reflect**
 16 **levels of risk if the relative vessel risk levels are**
 17 **not first quantified?**
 18 A. If there was a clear-cut risk matrix
 19 specifically for gross tonnage, then, yeah, you -- you
 20 could absolutely set this.
 21 I don't believe the record has such an item in
 22 it. And so the -- the risk associated with tonnage
 23 specifically between each bracket, staff just had to go
 24 off of -- of its rate making history, or I have to.
 25 **Q. Thank you. Yes, thank you.**

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1 **And should staff assign arbitrary values to cost**
 2 **recovery items without a justification generally?**
 3 A. I make a recommendation to this commission. And
 4 I do it -- I -- I try to make the best recommendation
 5 that I can.
 6 Now, they have the legal authority to make a
 7 policy call. And so if the commission did want to move
 8 pieces of the tariff design, a rate design that staff
 9 has proposed, they absolutely have the right to do that.
 10 They just, I believe, would need to voice one, they are
 11 doing it; and two, ideally, the reasons why they are
 12 doing it for -- for the justification.
 13 So --
 14 **Q. Yeah.**
 15 A. -- I don't believe I necessarily have the power.
 16 I have the power to come up with a recommendation that I
 17 believe is fair, just, reasonable and sufficient. And I
 18 believe I've done that.
 19 **Q. Good. Thank you.**
 20 **And I think that also answers my question**
 21 **regarding your recommendation wouldn't assign arbitrary**
 22 **values to cost recovery items without a justification;**
 23 **right?**
 24 A. No. And particularly the -- in my rate design,
 25 the real cognizant effort is the split between the

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1 hourly service rate and the gross tonnage
 2 classification, period. There are subcategories in
 3 there, but I have designed the rate so that each ship
 4 pays for the labor it is incurring, right, based --
 5 because we break DNI back down to the hourly billing
 6 unit.
 7 And when that's applied correctly, as the
 8 tariff, however the tariff defines it, then that ship is
 9 paying an adequate rate for the labor, which, frankly,
 10 that's what pilotage is. I mean, it is not a
 11 manufactured good. It is a service. And it requires
 12 people. And people have a cost. And so every hour that
 13 pilot is there, the ship pays.
 14 **Q. Thank you.**
 15 **Under the revenue requirement formula, has staff**
 16 **created a factor based on a customer's capacity to pay**
 17 **or their profitability?**
 18 A. No. In fact, that goes against one of the core
 19 principles in regulated rate setting, where it's the
 20 cost causer.
 21 And so if you cause a pilot to stay on your ship
 22 longer, you should, in fact, pay for that.
 23 **Q. Great. Thank you very much. No further**
 24 **questions.**
 25 **JUDGE HOWARD: Mr. Fukano, any redirect?**

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1 MR. FUKANO: No, no redirect.
 2 JUDGE HOWARD: Do we have any questions from
 3 the Commissioners?
 4 THE WITNESS: I'm sure we do.
 5 COMMISSIONER RENDAHL: Actually, not from
 6 me. But thank you.
 7 JUDGE HOWARD: Hearing no questions and --
 8 hearing no questions, Mr. Sevall, you are excused.
 9 Thank you for testifying today.
 10 THE WITNESS: Thank you.
 11 JUDGE HOWARD: You may turn off your camera.
 12 THE WITNESS: Let me see if I can do that.
 13 Thank you. Bye.
 14 JUDGE HOWARD: Of course, Mr. Sevall was our
 15 last witness.
 16 So we are at the end of the hearing. I have
 17 a couple of matters to briefly address before we
 18 adjourn, today.
 19 Right now the Commission has two Bench
 20 requests that I will read into the record. And these
 21 are directed towards Puget Sound Pilots. If you'll just
 22 bear with me, I will read them into the record.
 23 Bench Request No. 1 is, please provide any
 24 written documents that describe PSP's dispatch process,
 25 including but not limited to all dispatch and ordering

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1 policies and all dispatch data from the dispatch system
 2 software for the test year time period.
 3 Bench Request No. 2 is, please provide the
 4 number of mandatory pilot retirements in 2020, 2021, and
 5 2022. Of those mandatory retirements, how many callback
 6 days has each pilot accumulated as of the date of this
 7 Bench request. Additionally, please identify the number
 8 of currently licensed pilots who are or will be nearing
 9 retirement, and have accumulated callback days and may
 10 become unavailable for assignment due to burning
 11 callback days for each year of the proposed three-year
 12 rate period.
 13 Those are the Bench requests.
 14 CHAIR DANNER: Judge, do we want to just
 15 make clear, I think you said "retirements," we want to
 16 make clear we're talking about mandatory retirements;
 17 isn't that correct?
 18 JUDGE HOWARD: That is correct, Chair
 19 Danner. Let me just look.
 20 COMMISSIONER BALASBAS: It's my
 21 understanding.
 22 JUDGE HOWARD: Yes. In the last sentence
 23 there when I was describing Bench Request No. 2, and
 24 that was who are or will be nearing mandatory
 25 retirement, if that's what the Commissioners, how the

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1 Commissioners would like to phrase that.
 2 CHAIR DANNER: Thank you.
 3 COMMISSIONER RENDAHL: Yes.
 4 JUDGE HOWARD: The next issue to address
 5 would be post-hearing briefing.
 6 The Commission would -- would set a page
 7 limit of 60 pages for the initial post-hearing briefs
 8 and 30 pages for the reply post-hearing briefs.
 9 And we did just receive, this afternoon, a
 10 request for some additional time on those post-hearing
 11 briefs, which was represented to be essentially
 12 unopposed by the parties, and Pacific Yacht Management
 13 took no position on it. We intend to grant that.
 14 So bear with me, in just a moment I'll read
 15 the deadlines. So these are one-week extensions,
 16 essentially. The initial post-hearing briefs, the
 17 deadline set in Order 4 is moved from September 3rd to
 18 September 10th.
 19 And again, the deadline set in Order 4 for
 20 the post-hearing reply briefs is moved from
 21 September 17th to September 24th.
 22 MR. WILEY: Thank you, very much, all four
 23 of you.
 24 JUDGE HOWARD: Are there any questions from
 25 the parties that we should address before we adjourn?

1 MS. DeLAPPE: None from PMSA. Thank you
 2 very much.
 3 MR. WILEY: None from PSP. Thank you, as
 4 well.
 5 MR. FUKANO: None from staff.
 6 MS. WEBBER: None from Pacific Yacht
 7 Management.
 8 JUDGE HOWARD: Thank you all for
 9 participating in this meeting, and we are adjourned.
 10 (Hearing adjourned at 6:05 p.m.)
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1 CERTIFICATE
 2
 3
 4 STATE OF WASHINGTON)
 5)^{ss}
 6 COUNTY OF KITSAP)
 7
 8 I, CRYSTAL R. McAULIFFE, a Certified Court
 9 Reporter in and for the State of Washington, do hereby
 10 certify that the foregoing transcript of the remote
 11 hearing on AUGUST 13, 2020, is true and accurate to the
 12 best of my knowledge, skill and ability.
 13 IN WITNESS WHEREOF, I have hereunto set my hand
 14 and seal this 21st day of August, 2020.
 15
 16
 17 _____
 18 CRYSTAL R. McAULIFFE, RPR, CCR #2121
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