

Docket No. TP-220513 - Vol. IV

WUTC v. Puget Sound Pilots

April 5, 2023



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



Page 91	<p>BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION</p> <p>) WASHINGTON UTILITIES AND) TRANSPORTATION COMMISSION,) Complainant,) Docket No. TP-220513 v.))) PUGET SOUND PILOTS,))) Respondents.)</p> <p>VIDEOCONFERENCE EVIDENTIARY HEARING - VOLUME IV Pages 91-366 ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD</p> <p>April 5, 2023 9:10 a.m.</p> <p>(All participants appeared via videoconference.)</p> <p>DATE TAKEN: April 5, 2023 REPORTED BY: CARISA KITSELMAN, RPR, CCR 2018</p>
Page 92	<p>1 APPEARANCES 2 FOR PUGET SOUND PILOTS: (via Zoom) 3 MICHAEL HAGLUND ERIC BRICKENSTEIN 4 Haglund Kelly LLP 2177 Southwest Broadway 5 Portland, Oregon 97201 503.225.0777 6 haglund@hk-law.com ebrickenstein@hk-law.com 7 8 FOR COMMISSION STAFF: (via Zoom) 9 NASH CALLAGHAN Assistant Attorney General P.O. Box 47250 10 Olympia, Washington 98504 360.915.4521 nash.callaghan@utc.wa.gov 11 12 FOR PACIFIC MERCHANT SHIPPING ASSOCIATION: (via Zoom) 13 MICHELLE DeLAPPE Fox Rothschild LLP 14 1001 Fourth Avenue Suite 4400 15 Seattle, Washington 98154 206.389.1668 mdelappe@foxrothschild.com 16 17 FOR TOTE: (via Zoom) 18 STEVEN W. BLOCK Lane Powell 19 1420 Fifth Avenue Suite 4200 20 Seattle, Washington 98101 206.223.7718 blocks@lanepowell.com 21 22 ALSO PRESENT: (via Zoom) 23 CHAIR DANNER 24 COMMISSIONER RENDAHL 25 COMMISSIONER DOUMIT *****</p>
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1 *****
 2 (Court reporter joins at
 9:10 a.m.)
 3
 4 JUDGE HOWARD: I'm not rejecting SM-15X or
 5 SM-16X either because these were properly submitted
 6 as cross exhibits.
 7 Next we have PMSA's motion to strike testimony
 8 from Wood and McNeil. I am denying this motion due
 9 to a failure to meet and confer as required by WAC
 10 480-07-425(1)(a). In Washington, the duty to meet
 11 and confer is frequently seen as a jurisdictional
 12 requirement before the courts will consider such
 13 motions. Commission rules incorporate essentially
 14 the same requirement.
 15 I want to observe, however, that I have not
 16 seen any real justification for these assertions of
 17 privilege. McNeil's opinion was provided in
 18 testimony. And Wood is not an attorney. I've
 19 considered striking the testimony from these two
 20 witnesses by PMSA's awareness of this issue and its
 21 failure to meet and confer militated against that.
 22 If I do see such an issue occur again, I may
 23 very well strike testimony.
 24 Next we have PMSA's motion to strike
 25 non-rebuttal testimony. This motion is granted in

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1 part. I am striking portions of PSP's testimony that
 2 reflect new proposals that should have been brought
 3 in the direct case and do not respond to any
 4 responsive testimony. This includes Bendixen Exhibit
 5 SB-9T, page 7, line 20, page 8, line 10; and Captain
 6 Ivan Carlson, Exhibit IC-8T, page 19, line 21 through
 7 page 20, line 6; and Michael Titone -- I may not be
 8 saying the last name correctly -- Exhibit MJT-1T at
 9 page 9, line 16 through 25.
 10 I am striking Diamond Exhibit CLD-4T page 2,
 11 line 19 through page 4, line 14 as representing new
 12 testimony distinguishing the St. Lawrence Seaway that
 13 does not address any responsive testimony.
 14 I am declining to strike other testimony from
 15 PSP witnesses, including Diamond, Costanzo, Johnson,
 16 and Jordan, who provide rebuttal testimony on other
 17 overarching issues in the case, such as the standards
 18 for state versus federal pilot licenses, the best
 19 available protection standard, and other issues.
 20 These are -- I would consider these proper subjects
 21 for rebuttal testimony.
 22 Next we have PSP's motion to compel discovery.
 23 I'm granting PSP's motion for leave to reply in
 24 support of this motion, and I've considered PSP's
 25 reply. After reviewing the case law, including

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1 Eugster v. City of Spokane and Snedigar v. Hodderson,
 2 I agree with PMSA that these data requests show some
 3 probability of infringing its first amendment
 4 associational rights. Requesting membership lists
 5 and organizational financials has a presumed chilling
 6 effect. PSP has not articulated a compelling need
 7 for any of this information, and its requests instead
 8 appear to be overly broad. It has not demonstrated
 9 that its requests go to the heart of the matter or is
 10 crucial to its case, as discussed by the court in
 11 Snedigar.
 12 I also want to observe that PSP did not serve
 13 its first data request on PMSA until very late in the
 14 case, in early March. This is going to be relevant
 15 to some of my rulings in a minute.
 16 Finally, we have -- well, not finally, next we
 17 have PSP's emergency motion in limine. This is
 18 concerned with a memorandum prepared by PSP witness
 19 Walter S. Tabler on March 2, 2021. I have carefully
 20 considered this issue and I take it very seriously.
 21 I've read all of the materials submitted by the
 22 parties, including the declarations of Tabler and
 23 Carlson, which were not submitted with PSP's motion.
 24 Given the significance of the issues of privilege and
 25 the limited time frame, I'm considering all these

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1 materials, including the declarations. I have also,
 2 of course, considered PMSA's response in all of its
 3 exhibits. I have reviewed Tabler's memo in camera.
 4 After reviewing all these materials, I conclude
 5 that this memorandum is not subject to
 6 attorney/client privilege, but that it is still
 7 opinion work product and should still be protected
 8 from disclosure.
 9 A party wishing to assert a privilege may not
 10 simply keep quiet about the information it believes
 11 is protected from discovery. That is Cedell v.
 12 Farmers Insurance Company of Washington, 176 Wn. 2d
 13 686. The belief of a client as to an attorney/client
 14 relationship will control only if it is reasonably
 15 informed based on attending circumstances, including
 16 the attorneys' words or actions, State v. Hansen,
 17 122 Wn. 2d 712. The relationship can be implied from
 18 the parties' conduct, Bohn v. Cody, 11 Wn. 2d 357.
 19 The issue is reasonableness of the client's belief at
 20 the time of the events in question, again, Bohn v
 21 Cody. Although Tabler was formerly PSP's general
 22 counsel, PSP has repeatedly characterized Tabler as a
 23 consultant and has not included his work in its list
 24 of legal expenses.
 25 In response to Staff Data Request 45, PSP

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1 objected not on the basis of attorney/client
 2 privilege, but on the basis of a self-critical
 3 analysis privilege, which is a concept that I have
 4 found to be discussed by federal courts but is
 5 unlikely to apply in this context. This is shown in
 6 Exhibit B to PMSA's response, the objection to the
 7 data requests. When asked to list attorney fees for
 8 the last five years, PSP did not include Tabler's
 9 fees, Exhibit C to PMSA's response.

10 PSP also provided a summary of Tabler's
 11 consulting work without asserting attorney/client
 12 privilege, and that's in Exhibit E to PMSA's
 13 response. PSP did not assert attorney/client
 14 privilege until it realized that PMSA had the memo at
 15 issue in its possession, Exhibit G to PMSA's
 16 response.

17 PSP's after-the-fact assertions of
 18 attorney/client privilege and attorney/client
 19 relationship are contrary to its actions at the time
 20 the memo was prepared and its earlier discovery
 21 responses.

22 However, I am finding this to be opinion work
 23 product under Civil Rule 26(b)(4), which includes
 24 work product by consultants. A strong public policy
 25 favors shielding genuine work product from discovery.

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1 That's Upjohn Company v. United States, 449 U.S. 383.
 2 Even if a party shows substantial need, the court
 3 shall protect against disclosure of mental
 4 impressions, conclusions, opinions, or legal theories
 5 of an attorney or other representative of a party.
 6 Leahy v. State Farm Mutual Auto Insurance Company,
 7 3 Wn.App 2d 613.

8 After reviewing the memo in camera, I'm finding
 9 that it is replete with Tabler's various opinions and
 10 theories. Tabler is specifically opining on
 11 arguments PMSA may make in litigation in the future
 12 and future litigation strategies. It is clear that
 13 this memo was prepared in anticipation of litigation.
 14 Even if PMSA had substantial need of any facts
 15 referenced in this document, which I have not --
 16 which I have not seen, a strong public policy weighs
 17 against disclosing opinion work product, and this
 18 memo was replete with opinion work product.

19 I therefore order that PMSA is precluded from
 20 introducing, relying on, or referring to the March 2,
 21 2021, memorandum prepared by Walt Tabler during this
 22 proceeding.

23 Finally, I note that PSP has submitted a notice
 24 of intent to call Walt Tabler as a witness, if
 25 necessary. I am denying any request to call

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1 Walt Tabler as a witness for PSP to elicit testimony
 2 from Walt Tabler on this issue because I've already
 3 considered his declaration.

4 I want to -- as I conclude my ruling on this
 5 particular motion, I want to ask counsel for PMSA,
 6 is -- is this memo in any of the cross exhibits
 7 submitted so far? I don't know if I've seen it.

8 MS. DeLAPPE: Your Honor, we refrained from
 9 filing or submitted it with anyone until your ruling.
 10 So, no.

11 JUDGE HOWARD: All right. Thank you. I
 12 just wanted to confirm that.

13 MR. HAGLUND: Your Honor, there is one --
 14 there is a data request that quoted from that
 15 memorandum that I believe has been submitted by
 16 PSP -- or PMSA as a cross-examination exhibit. And
 17 that would need to be removed.

18 JUDGE HOWARD: Do you have the exhibit
 19 number handy for that?

20 MR. HAGLUND: I don't have it right at my
 21 fingertips. IC-18X.

22 JUDGE HOWARD: All right. Is there -- which
 23 specific data request is at issue?

24 MR. HAGLUND: It was 658. It has four
 25 quotes from that memorandum.

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1 JUDGE HOWARD: Just a moment. I'm going to
 2 pull it up.

3 MS. DeLAPPE: If I may, Your Honor.

4 I would suggest that these excerpts are not --
 5 they do not actually state anything that would be
 6 subject to the work product protections because there
 7 is nothing there that is about future litigation
 8 strategies. Just for your consideration as you're
 9 looking at the exhibit.

10 MR. HAGLUND: Your Honor, given the ruling
 11 you've made, we see no basis whatsoever for excerpts
 12 from that work-product-protected memo to be subject
 13 to potential questioning and quoting in this
 14 proceeding.

15 JUDGE HOWARD: I am going to agree on PSP --
 16 agree with PSP on this issue. I'm going to reject
 17 specifically page 25 of Exhibit IC-18X. And we will
 18 otherwise discuss the admission of the remainder of
 19 this exhibit in a few moments.

20 All right. Last, we have PSP's motion for
 21 leave to file corrected testimony from David Lough.
 22 This was filed yesterday afternoon.

23 I see we have the court reporter joining us.
 24 Can you hear me?

25 THE REPORTER: Yes. Can you hear me?

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1 JUDGE HOWARD: We can continue recording for
 2 the time being, Ryan. We'll do belt and suspenders.
 3 All right. So regarding PSP's motion for leave
 4 to file corrected testimony from David Lough, I am
 5 denying this motion and these exhibits are not
 6 accepted. There is no showing by PSP in its motion
 7 that justifies waiting until the afternoon before the
 8 hearing to file supplemental testimony from its
 9 primary expert on compensation, which is the primary
 10 cost driver of the revenue requirement for the
 11 organization. There's only a very general reference
 12 to Lough discovering errors as he prepared for cross.
 13 Under the circumstances and given the timing of
 14 this motion, that is simply not enough. Submitting
 15 changes the day before the hearing, absent special
 16 circumstances, makes PSP a moving target and is
 17 obviously prejudicial to the other parties. This is
 18 not the first time that supplemental testimony has
 19 been submitted and changed PSP's position in this
 20 case. I want to note as well that Lough's corrected
 21 testimony is again misnumbered. But this is going to
 22 be a nonissue because it's rejected.
 23 If these unauthorized filings and improper
 24 questionable assertions of privilege continue in
 25 future proceedings, I will likely consider striking

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1 testimony, as I should.
 2 All right. Let's turn to the admission of
 3 pre-filed testimony and exhibits. In my e-mail to
 4 the parties, I -- an e-mail to the parties last week,
 5 I believe, I circulated an exhibit list that included
 6 filings up to and including the parties' cross
 7 exhibits filed on March 29, 2023. As I have
 8 indicated, I rejected PSP's supplemental testimony
 9 filed on March 24th.
 10 I've also stricken certain lines and pages of
 11 rebuttal testimony. I have considered Staff's
 12 objection to the errata sheet for Burton's testimony,
 13 WTB-05, which was filed on March 31st. I observe
 14 that these are relatively minor but substantive
 15 corrections. I will grant PSP an exemption from WAC
 16 480-07-460(1)(a) and accept this particular errata
 17 sheet. In the interest of accuracy, I don't feel
 18 that this particular change causes prejudice to the
 19 other parties, but I would advise PSP, for the
 20 future, of the need to seek leave for substantive
 21 corrections and being mindful of timing.
 22 I'm going to ask the parties for their
 23 positions on the admissibility of the evidence and
 24 whether they stipulate to the admission of pre-filed
 25 exhibits and testimony or if they wish to raise

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1 objections.
 2 I would turn first to PSP.
 3 MR. HAGLUND: On behalf of PSP, we do not
 4 have objections to the pre-filed testimony of PMSA
 5 witnesses, Staff witnesses, or TOTE Maritime
 6 witnesses and would stipulate to its admission as
 7 submitted in original and rebuttal forms, subject, of
 8 course, to your rulings previously that dealt with an
 9 important issue.
 10 JUDGE HOWARD: All right. Thank you.
 11 Could I hear from Staff?
 12 MR. CALLAGHAN: Thank you, Your Honor.
 13 Staff does not have any additional objections
 14 and would stipulate to the admission of the other
 15 pre-filed testimony and exhibits.
 16 JUDGE HOWARD: All right. Thank you.
 17 Could I hear from PMSA?
 18 MS. DeLAPPE: PMSA likewise stipulates.
 19 Thank you.
 20 JUDGE HOWARD: Could I hear from TOTE?
 21 MR. BLOCK: Your Honor, TOTE has no
 22 objection with -- objections and would so stipulate
 23 as well.
 24 JUDGE HOWARD: All right. Thank you. Thank
 25 you all. That was -- that was surprisingly brief.

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1 In that, given the parties' stipulation and
 2 lack of objections, I am going to deem all the
 3 pre-filed testimony and exhibits admitted with the
 4 exception of what I have already indicated in my
 5 rulings so far today. So that means only page 25 of
 6 IC-18X is rejected. The supplemental testimony from
 7 Bendixen, SB-11T through SB-14, is rejected.
 8 The MB -- sorry. Give me one moment. JJN-6T
 9 and JJN-7 are rejected.
 10 (Prefiled exhibits admitted.)
 11 MR. HAGLUND: Did you say 16 and 7, Your
 12 Honor?
 13 JUDGE HOWARD: 6T and --
 14 MR. HAGLUND: 6T. Okay.
 15 JUDGE HOWARD: And JJN-7. Sorry.
 16 And -- and as I indicated, McCarthy SM-8T
 17 through 11 are rejected. And I believe, setting
 18 aside the specific lines and pages I rejected on --
 19 given PMSA's motion to strike non-rebuttal testimony,
 20 I believe that is it and everything else is in place.
 21 And I will provide a copy of the exhibit list to the
 22 court reporter after the hearing so that it can be
 23 made part of the record.
 24 I believe the Commissioners will be joining us
 25 in just a moment. I will let them -- let's -- let's

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1 see. Do we have the Commissioners with us already?
 2 I believe they are going to be joining us in just a
 3 minute here.
 4 Let's go off the record for a moment. I am
 5 going to send the Commissioners a message to let them
 6 know that we are ready. When they join us, we'll
 7 give brief appearances for the Commissioners and then
 8 we will start with opening statements.
 9 (A break was taken from
 10 9:27 a.m. to 9:35 a.m.)

11 JUDGE HOWARD: As I indicated, the
 12 Commissioners have joined us for the virtual hearing.
 13 Let's have the parties give brief appearances
 14 for the Commissioners before we turn to opening
 15 statements. I would turn first to PSP.
 16 MR. HAGLUND: Michael Haglund of Haglund
 17 Kelly and my colleague, Eric Brickenstein, on behalf
 18 of the Puget Sound Pilots.
 19 JUDGE HOWARD: Thank you.
 20 And could we hear from Staff?
 21 MR. CALLAGHAN: Thank you, Your Honor.
 22 Nash Callaghan, assistant attorney general, on behalf
 23 of Commission Staff.
 24 JUDGE HOWARD: Thank you.
 25 I'll turn next to PMSA.

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1 MS. DeLAPPE: Good morning.
 2 Michelle DeLappe on behalf of Pacific Merchant
 3 Shipping Association.
 4 JUDGE HOWARD: Thank you.
 5 And could we hear from TOTE Maritime Alaska,
 6 LLC, or TOTE?
 7 MR. BLOCK: Good morning, Commissioners.
 8 Steven Block of Lane Powell appearing for TOTE
 9 Maritime.
 10 JUDGE HOWARD: All right. Thank you.
 11 And I have -- I will inform the Commissioners
 12 that the exhibits have been -- all the exhibits have
 13 been admitted into evidence with the exception of
 14 page 25 of Exhibit IC-18X. And Exhibits SB-11T
 15 through SB-14; exhibits JJN-6T and JJN-7. And I
 16 have -- by separate e-mail to the Commissioners, I
 17 have already indicated to them which lines and pages
 18 of testimony I have struck based on PMSA's motion.
 19 So with those exceptions, all the exhibits are
 20 admitted.
 21 So let's begin with opening statements limited
 22 to 15 minutes. And I would turn first to PSP.
 23 OPENING STATEMENT
 24 MR. HAGLUND: Thank you, Your Honor.
 25 Commissioners and Your Honor, this is only the

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1 second pilotage rate case before this Commission, and
 2 the first with a robust and comprehensive record on
 3 the part of the proponent, Puget Sound Pilots. What
 4 is remarkable in this second pilotage case is that
 5 PMSA has doubled down on all of the same arguments
 6 that it advanced in 2019/'20, which largely prevailed
 7 against a fairly skimpy record put together by PSP
 8 and a legal team with no prior pilotage experience.
 9 What's different in this case and should
 10 generate different results is the breadth and the
 11 strength of PSP's evidence, which is designed to
 12 address six issues. Those six are as follows.
 13 First, the legal standard that should govern
 14 the rate-setting process that funds Washington's
 15 compulsory pilotage system; second, that a nationally
 16 competitive level of pay and benefits is necessary to
 17 attract top quality pilot trainees to Puget Sound
 18 Pilots and to advance both Washington's and PSP's
 19 diversity, equity, and inclusion objectives; third,
 20 the PSP pension is a clearly reasonable, known, and
 21 measurable cost that should be funded in the tariff,
 22 either on its existing pay-as-you-go system basis or
 23 preferably transition to a fully-funded defined
 24 benefit plan; fourth, the risks of pilotage,
 25 particularly larger and flag of convenience vessels

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1 are persistent and growing, and the excessive level
 2 of callback jobs performed by PSP during their
 3 off-watch duty cycle is un -- is increasing those
 4 risks; fifth, pilotage rates are paid by the ship
 5 served, 90 percent of which are foreign flag vessels,
 6 by pilots who are primarily servants of the public,
 7 and PSP's evidence on shipping economics shows that
 8 these rates are insignificant within the context of a
 9 voyage's port costs and even a doubling or tripling
 10 of PSP's pilotage rates, according to shipping
 11 economist Ken Eriksen, would not affect the volume of
 12 ships calling Puget Sound; and sixth, a rate design
 13 that includes multiple automatic adjustors to the
 14 tariff is the key to a regulatory future for pilotage
 15 in Washington where the time intervals between
 16 contested general rate cases are five or more years
 17 and not the existing 18-month pattern.
 18 Notably, PSP has filed original and rebuttal
 19 testimony, now all in the record, totaling over 18 --
 20 over 800 pages from 26 witnesses. PMSA is presenting
 21 four testifying witnesses and elected not to engage a
 22 witness on any of the following issues: a shipping
 23 economist, a compensation expert, or a fatigue risk
 24 expert.
 25 I will now briefly describe the evidence that

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1 addresses these six issues.
 2 First, the standard for pilotage rate setting
 3 in Washington must be applied with an eye toward the
 4 casualty prevention environmental protection function
 5 of the system. PSP believes that the Commission's
 6 Order 06, issued earlier this year, where the
 7 Commission stated that the fair, just, reasonable and
 8 sufficient standard must be applied in light of other
 9 statutes, quote, "such as RCW 88.16.005, which
 10 emphasizes the importance of pilotage and the
 11 protection of the natural environment," closed quote,
 12 is a significantly different standard than the
 13 utility service model approach that applies in the
 14 prior case.
 15 PSP's executive director, Charles Costanzo, who
 16 has significant prior general counsel experience in
 17 the maritime industry, explains in his testimony why
 18 PSP believes that Order 06 can be interpreted as
 19 consistent with the best achievable protection
 20 standard applicable to the Department of Ecology and
 21 which PSP advocates should be construed as applying
 22 in this case.
 23 When it comes to the importance of spill
 24 prevention and the nation-leading reputation of this
 25 State's Department of Ecology, I have firsthand

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1 knowledge, having served as lead counsel for
 2 Washington as a special assistant attorney general in
 3 Washington's largest ever oil spill, the Nestucca oil
 4 spill that occurred in December of 1988. That case
 5 was litigated in Oregon, where the vessel owner
 6 sought to reduce its liability for that quarter
 7 million gallon spill to a small fraction of the more
 8 than \$15 million that was ultimately recovered for
 9 Washington.
 10 I also was retained to assist DOE in briefing
 11 before the Ninth Circuit and the U.S. Supreme Court
 12 in connection with defending its oil spill and tug
 13 escort and other regulations in litigation commenced
 14 by INTERTANKO, the oil tanker trade association that
 15 prosecuted those cases. And I bring over 40 years of
 16 experience representing pilot groups in Oregon and
 17 Alaska to this case.
 18 As to nationally competitive pay and benefits,
 19 according to PMSA's Captain Moore, it's impossible to
 20 compare the -- the Puget Sound pilotage ground to any
 21 other in the U.S. without an incredible array of
 22 statistics regarding the particulars of the ground
 23 and the workload and characteristics of the -- the
 24 pilot group.
 25 In the last case, this Commission rejected

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1 PSP's comparability evidence as insufficient, that
 2 that should not be the situation on this record,
 3 which includes a workload comparison that includes 12
 4 different pilot groups, plus 100 percent of the
 5 publicly available pilot income information, where
 6 it's filed publicly, or rate orders that have been
 7 issued by regulators like yourself in the last five
 8 years.
 9 It's worth emphasizing that no other pilotage
 10 regulator in the United States agrees with
 11 Captain Moore that the extraordinarily detailed
 12 comparisons he advocates are necessary. Instead
 13 these regulators, many on the West Coast, regularly,
 14 and often pursuant to statute or regulation,
 15 evaluate -- evaluate pilot income in their own
 16 jurisdictions with an assessment of the net income
 17 earned elsewhere.
 18 Indeed, the PMSA just last year supported
 19 legislation in California enacted last fall that
 20 specifically requires and in -- in connection with,
 21 and I quote, "In determining target net income per
 22 pilot, three factors," one of which -- and I'll quote
 23 it -- is "evidence of compensation of comparable
 24 maritime professions, including individuals in other
 25 state-regulated pilotage associations, at a minimum

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1 considering evidence of the compensation and
 2 benefits."
 3 PSP's compensation expert, David Lough, has
 4 assembled data from 13 pilot groups comprising
 5 42 percent of all licensed maritime pilots in the
 6 U.S., an elite maritime workforce, pinnacle of the
 7 profession for a merchant mariner, of just over 1,200
 8 individuals. He applied -- applies the location pay
 9 differential factor and determines that the median
 10 level of pilot income for these groups to be
 11 approximately \$574,000.
 12 PSP at present, based upon audited financials,
 13 is the lowest paid pilot group among the 13 in
 14 Mr. Lough's table. We would emphasize that while
 15 Mr. Lough derives the median from publicly available
 16 financials and rate orders, this Commission has wide
 17 decision-making space in addressing where DNI --
 18 which is your term, it's identical to the target net
 19 income used most everywhere else -- where to set
 20 that. You could decide to set it at the top end of
 21 the table of publicly available information you're
 22 provided in this case. You could establish it at the
 23 median or higher than the median. You could also
 24 focus on the pay in West Coast grounds, where the
 25 Columbia River groups of the bar pilots and the river

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1 pilots are going to earn well above \$500,000 in 2023.
 2 To PSP, it's all about landing on a nationally
 3 competitive level of pay and benefits.
 4 Regarding the pension, the third issue, the
 5 holding -- I think it's sufficient to say in my brief
 6 remarks here that the holding of the Washington
 7 Supreme Court in 1943 in the Pacific Telephone and
 8 Telegraph case, that rationale should apply here and
 9 result in a determination by the Commission that the
 10 cost of PSP's pension, which was approximately
 11 \$6 million in 2022 in terms of payments to retirees,
 12 must be covered in the tariff. This is because,
 13 consistent with that Supreme Court case, the existing
 14 plan providing a 1.5 percent annual accrual rate was
 15 reasonable when adopted in 2001, with the support of
 16 industry, through PMSA's predecessor the PSSOA, the
 17 Puget Sound Steamship Operators Association and a
 18 unanimous vote by the board of pilotage Commissioners
 19 to include that increase in accrual rate from
 20 1.25 percent to 1.5 percent per year and include the
 21 entire cost of the -- of the pension program in the
 22 tariff.
 23 As to pilotage risks, which we contend in -- in
 24 considerable evidence is -- are persistent and
 25 growing, multiple witnesses from both sides will

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1 address this issue. But a few quick points I'd like
 2 to make here.
 3 First, pilots are Puget Sound's first and
 4 primary line of defense against a poorly maintained
 5 flag of convenience ship because a pilot is legally
 6 required to be aboard and direct her every move. In
 7 contrast, the Coast Guard inspects, does not operate,
 8 only approximately 14 percent of the ships that come
 9 to Puget Sound; second, as ships grow larger, which
 10 has been happening for centuries and continues to
 11 this day, pilotage risks increase, as our witnesses
 12 explained; and, third, an excellent study from Canada
 13 reached the following conclusion: Pilotage -- and I'm
 14 quoting, pilotage is the single -- I'm sorry,
 15 "pilotage is the strongest single safety measure that
 16 can be employed to reduce the risk of maritime
 17 accidents. It reduces the accident risk by a factor
 18 of at least 44 times."
 19 And, Mr. Crandall, if you could put up the
 20 exhibit from Mr. Eriksen's testimony.
 21 This chart is from that Canadian cost benefit
 22 analysis. It shows that, with pilots, you get close
 23 to an accident-free environment with pilots only
 24 driving the -- the risk of accident down to
 25 substantially less than one percent. And it goes

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1 down a significant factor beyond that with tug
 2 escorts, which Washington requires for all oil
 3 tankers.
 4 There's no question that pilots are the front
 5 line of protection.
 6 When it comes to callbacks, which occur when
 7 a -- when there's a lack of a rested pilot on watch
 8 that necessitates calling an off-watch pilot to
 9 perform a job, PSP's levels are extremely high,
 10 averaging 18 to 20 percent in recent years and
 11 12 percent in the COVID low-traffic years.
 12 We have an expert witness, Dr. Charles
 13 Czeisler, the renowned -- the most well-regarded and
 14 renowned sleep medicine expert in the United States,
 15 longtime chair of the department of sleep medicine at
 16 Harvard Medical School. He will be available for
 17 questions from the Commissioners. PMSA is not asking
 18 him any cross. He was prepared to present some
 19 illustrations that would help illustrate his hundred
 20 pages of testimony.
 21 If you could put the first one up,
 22 Mr. Crandall.
 23 This is one that would help explain and bring
 24 to, I think, further clarity your -- Dr. Czeisler's
 25 testimony. This is one showing the callbacks. The

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1 next illustration shows the incredible challenging --
 2 if you can go to number two -- incredible challenging
 3 job that a pilot has in terms of using time zones to
 4 show how many different time zones a pilot is
 5 effectively working, given the nature of their
 6 unpredictable schedule, with most -- over 50 percent
 7 of the jobs occurring at night.
 8 Dr. Czeisler will be present when -- when we
 9 present him. He is not scheduled for cross, but we
 10 are hopeful that the Commissioners will have an
 11 interest in asking Dr. Czeisler to explain these
 12 illustrations.
 13 And finally, PSP's shipping economist,
 14 Ken Eriksen, a senior vice president with the firm
 15 that is this country's leading assembler, assessor,
 16 and consulting firm regarding U.S. and international
 17 shipping, makes clear that PSP's proposed rates --
 18 rate increase, even if increased by this Commission
 19 to transition the pension to pull funding, will not
 20 affect the number of ship calls. The -- his
 21 testimony shows that the PSP's proposed rates will be
 22 largely -- even if increased, will be largely below
 23 those of other West Coast ports and that the
 24 volatility of PSP's diverse mix of ship traffic
 25 strongly favors the use of an automatic tariff

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1 adjustor to ensure that the tariff annually is
 2 collecting the revenue requirement, not more, not
 3 less, but adjusted as necessary with volatility in
 4 traffic.
 5 Thank you for your attention.
 6 MS. DeLAPPE: Your Honor?
 7 JUDGE HOWARD: Yes.
 8 MS. DeLAPPE: Michelle DeLappe for PMSA.
 9 The last slide that Mr. Haglund presented is, to my
 10 understanding, not part of the record. And I would
 11 ask that it be struck from this record.
 12 JUDGE HOWARD: Mr. Haglund, is that already
 13 in testimony?
 14 MR. HAGLUND: No. It was going to be a
 15 demonstrative exhibit used by Dr. Czeisler to
 16 illustrate his testimony. We were not going to seek
 17 to add it to the record. It was just a demonstrative
 18 exhibit, which is commonly used in rate cases and
 19 trial proceedings in state and federal courts.
 20 MS. DeLAPPE: If I may clarify, it's
 21 actually -- I meant the last two slides. And I would
 22 state that they are not -- they're more than
 23 demonstrative. Thank you.
 24 JUDGE HOWARD: Okay. I'll note PMSA's
 25 objection. I will allow them as demonstrative

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1 exhibits.
 2 Let's turn next to Staff for any opening.
 3 OPENING STATEMENT
 4 MR. CALLAGHAN: Thank you, Your Honor. In
 5 the interest of time, Staff is going to waive opening
 6 statement today. Thank you.
 7 JUDGE HOWARD: I would turn next to PMSA.
 8 MS. DeLAPPE: Thank you, Your Honor.
 9 Good morning, Commissioners. I will try to
 10 endeavor to be very brief.
 11 OPENING STATEMENT
 12 MS. DeLAPPE: One reason that I can be brief
 13 is that this Commission has already addressed and
 14 resolved nearly all of the issues in the initial rate
 15 case concluded two years ago. Not much has changed
 16 since then, neither in the costs nor in the nature of
 17 the job of piloting, nor in the business model and
 18 finances of the State's pilotage monopoly in Puget
 19 Sound, nor are those factors regarding the Puget
 20 Sound's pilots operating in capital footprint very
 21 complex. Unlike many of the entities that are before
 22 this Commission, there's -- this is just a small
 23 company with many well-compensated working owners who
 24 are independent contractors to customers and working
 25 in an unincorporated association with one another.

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1 They have just a handful of employees, low
 2 capitalization, few assets, very few moving parts.
 3 I would also disagree with what my friend at
 4 the bar, Mr. Haglund, has stated regarding the record
 5 here. Certainly PSP's submission is extensive. We
 6 agree with that. However, the evidence is even less
 7 compelling than in the prior rate case.
 8 I will add, too, that the regulatory
 9 environment for pilotage is straightforward and
 10 stable. It has been this way for years. As -- I
 11 represent, of course, the customers of pilots who
 12 rely on the State Board of Pilotage Commissioners to
 13 ensure the provision of safe pilots. We believe that
 14 the BPC does a fundamentally sound job of training,
 15 licensing, and disciplining its licensees. The BPC
 16 addresses various incidents and accidents as needed.
 17 Despite being an exceptionally small state agency,
 18 BPC competently and consistently handles the
 19 licensing tasks before it.
 20 As ratepayers, we ask that you take a very
 21 simple and direct approach to the application of the
 22 formulas and methodologies established by the
 23 Commission in the initial rate case. Likewise, we
 24 appreciate the recommendations made in the case by
 25 UTC Staff. We found in the prior rate case that

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1 Staff recommended the creation of a very
 2 comprehensive formula and, within that formula,
 3 recommended a fair set of modest and defensible rate
 4 increases. In this rate case, we feel the same way.
 5 Staff recommendations are consistent with the
 6 principles of fairness established in the prior rate
 7 case.
 8 The only two issues not resolved in the prior
 9 rate case that are unfortunately still outstanding
 10 are, first of all, that the Commission ordered PSP to
 11 work with stakeholders, including PMSA, to effectuate
 12 a collaborative workshop process to create our
 13 recommendations regarding pilot retirement for
 14 consideration during this rate process. As Order 03
 15 in this case has already recognized, PSP did not
 16 comply with those instructions and the issue remains
 17 outstanding. And second, the other outstanding issue
 18 is regarding whether domestic vessels should be
 19 assessed tonnage on their domestic gross registered
 20 tonnage or international tonnage as if they were
 21 foreign flagged vessels. We support TOTE's approach
 22 to maintaining the longstanding historic practice,
 23 and that PSP has not established a good reason to
 24 depart from those traditional calculations.
 25 For the rest of the issues that the last case

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1 did not -- that the last case did resolve, most of
 2 the existing framework established by the Commission
 3 should simply be retained.
 4 So we would ask the Commission to stay the
 5 course, set a reasonable framework for the
 6 consideration of costs for the provision of pilotage
 7 services, and set a rate which is compensatory for
 8 the pilots that run the business of providing that
 9 service. That framework positioned things well for a
 10 more streamlined petition from PSP in this
 11 rate-making case with a simple application of the
 12 facts to the formula factors in a relatively easy
 13 administrative burden for ratepayers and Staff.
 14 Unfortunately we're now seeing the relitigation
 15 of nearly all of the foundational issues that the
 16 Commission already dealt with in the last rate case.
 17 That's been a tremendous burden on ratepayers and on
 18 Staff and on the Commission, I'm sure. It was
 19 entirely avoidable, however we respect that it is
 20 PSP's right, as the monopoly service provider, to
 21 present its claims to the Commission. And, of
 22 course, it's our responsibility on behalf of the
 23 ratepayers to address those claims. We look forward
 24 to a productive hearing and believe the evidence
 25 presented during it will show that the Commission's

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1 basic framework in the initial case continues to make
 2 sense.
 3 Thank you for the opportunity to participate.
 4 JUDGE HOWARD: Thank you. I turn next to
 5 TOTE.
 6 OPENING STATEMENT
 7 MR. BLOCK: Thank you, Your Honor.
 8 I'm Steve Block of Lane Powell. I'll be
 9 appearing here for TOTE. And I'll be brief here in
 10 this opening statement, as will be the testimony
 11 presented related to TOTE's intervention in this GRC.
 12 Now, the reason for that is that the Commission
 13 really has ruled already on most of the pertinent
 14 issues and there's very little factual dispute to
 15 address here.
 16 TOTE's intervention, as the Commissioners are
 17 aware, addresses PSP's change in its methodology of
 18 calculating pilotage rates for two of TOTE's vessels,
 19 those are the Midnight Sun and the North Star.
 20 Originally, for some 20 years, these coastwise
 21 vessels were calculated based on their domestic
 22 tonnage, their domestic rates.
 23 Beginning after the conclusion of the 2020 rate
 24 case, PSP's 2020 rate case, PSP started calculating
 25 those rates based on the international metric. Now

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1 you're going to hear different references to domestic
 2 or international or IGT, international growth
 3 tonnage, and GT ITC, which stands for gross tonnage
 4 international tonnage convention, those terms are
 5 interchangeable. Essentially, there are two
 6 different methodologies. One is a domestic or GRT,
 7 gross registered tonnage, assessment of the -- a
 8 vessel's tonnage, and the other one is an
 9 international one.
 10 Okay. The new tariff that the Commission
 11 approved on November 11, 2020, in its Order No. 9,
 12 provides at Item 300, the tonnage charge shall be
 13 based on the vessel's international gross tonnage.
 14 And that is without exception or qualification.
 15 Now, these two vessels are what we call
 16 roll-on/roll-off vessels, Ro-Ros. And they are
 17 different than the typical vessel that PSP services.
 18 Most vessels are container cargo vessels. They
 19 can be stacked, packed, you know, container to
 20 container, stacked one on top of the other on all
 21 decks of the storage holds. But Ro-Ros are
 22 different. They transport automobiles. And you
 23 can't stack automobiles one on top of the other. And
 24 they have to have these tracks in the cargo holds
 25 that allow the automobiles to be loaded onto and

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1 off -- loaded off the vessels. They're also
 2 different, these two vessels, in, again, that they
 3 operate exclusively in what we call the coastwise
 4 trade, domestic transportation, transportation
 5 between points in the United States.
 6 By changing its methodology from the domestic
 7 tonnage rate to calculate a pilotage service fee to
 8 the international one, increased pilotage fees for
 9 these two vessels -- increased from a -- by \$378,411
 10 the first year of the new tariff and \$383,825 the
 11 second year -- these are projected -- for a total
 12 \$762,237 in higher pilotage fees than TOTE would have
 13 expected to pay under the old approach.
 14 Current invoicing to date -- actually as of a
 15 week or so ago -- is \$719,255.28 more, based on this
 16 new approach to calculating pilotage services.
 17 That's some 56.9 percent higher under the new
 18 methodology.
 19 On August 26, 2021, TOTE petitioned the
 20 Commission for amendment rescission or correction of
 21 Order No. 9 under WAC 480-07-875. And we ask the
 22 Commission to amend Item 300 of the tariff so that
 23 coastwise vessels continue to be and in the future
 24 are rated based on their domestic tonnage. Again,
 25 these vessels don't engage in international trade for

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1 which the IGT, the international rate, would be
 2 necessary and proper to use. Instead, the gross
 3 registered tonnage, GRT for coast wise shipping
 4 should be -- should continue to be used as it has
 5 been by PSP's services since 2003.
 6 TOTE argued in its petition that PSP's
 7 worksheets that it had submitted in support of its
 8 attempts to raise rates in its tariff during the last
 9 GRC for the test year showed rates for TOTE's two
 10 vessels to continue to be based on GRT. It showed no
 11 rate increase, no significant increase in the rate
 12 assessment.
 13 We argued that the economic impact, as has been
 14 realized, is tremendous. It creates just the, quote,
 15 "rate shock" that the Commission intended to avoid.
 16 TOTE understandably did not raise an issue
 17 about this tariff provision in the 2020 GRC because
 18 it saw no impact. All we did was look at the
 19 worksheets and saw that our rates would remain the
 20 same based on the same calculation methodology.
 21 PSP put in an opposition to our petition. And
 22 it wrote in its opposition the following: The BPC,
 23 the Board of pilotage Commissioners, pilotage tariff
 24 published in WAC 363-116-300 applied a tonnage charge
 25 based upon a vessel's gross tons. While the term

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1 "gross tonnage" is commonly used to refer to IGT, the
 2 BPC did not define gross tons. Instead, the tariff
 3 provided that if a vessel is required to hold a
 4 certificate of its IGT, then tonnage shall be --
 5 shall apply based upon IGT. As a consequence of the
 6 ambiguity created by that statement, PSP agreed to
 7 invoice TOTE based upon its GRT. That was PSP's
 8 position in response to TOTE's petition.
 9 What ambiguity? There is no ambiguity. TOTE
 10 is not required to have what's called an
 11 international tonnage certificate. It doesn't have
 12 to have one because it doesn't operate international
 13 trade. Actually, the position PSP takes at this
 14 juncture has changed a little bit. We see it now
 15 saying that the process over the last 20 years of
 16 calculating rates on domestic tonnage is a, quote,
 17 "Historical mistake."
 18 In response to TOTE's petition, PSP argued,
 19 well, the tariff says what it says. End of story.
 20 No reason to treat vessels differently if they are of
 21 a certain metric as measured by tonnage, number one.
 22 Number two, TOTE had its chance in the 2020 GRC
 23 to raise this issue and did not do so. And three,
 24 the size of the vessels, i.e. the width, the length,
 25 and the height of TOTE's two vessels, is the same as

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1 other vessels. So they should be treated identical.
 2 Well, as I say, the Commission agreed with TOTE
 3 on most points. In its Order No. 12 granting TOTE's
 4 petition, dated February 2, '22, the Commission ruled
 5 PSP provided exhibits and work papers that used its
 6 previous methodology for calculating tonnage rates
 7 for the two TOTE vessels at issue. The parties, and
 8 ultimately the Commission, relied on the incorrect
 9 information presented in the exhibits and work papers
 10 to evaluate PSP's proposed rate design. We find that
 11 PSP's failure to identify its tariff change related
 12 to tonnage calculations, coupled with the calculation
 13 error in its exhibits and work papers, substantially
 14 interfered with the Commission's ability to evaluate
 15 the PSP's proposed rate design. The commissioner --
 16 I'm sorry, the Commission did not consider the issue
 17 of gross tonnage rate calculation methodology in
 18 Order No. 9, let alone the significant increase in
 19 rates for the two TOTE vessels at issue, both of
 20 which produced an effect the Commission did not
 21 contemplate.
 22 These factors constitute sufficient grounds to
 23 amend Order 9. The order, Order 9, defers amendment,
 24 actual amendment to the tariff language until this
 25 GRC because the Commission wanted to hear evidence

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1 and argument about two points. The first one is the
 2 risk of piloting these two vessels as compared to the
 3 more typical vessels that PSP services; and, two, the
 4 rate shock that results from these drastically
 5 increased rates that arise from the new methodology,
 6 which the Commission suggests disregards the concept
 7 of gradualism.
 8 The evidence will show and -- the testimony and
 9 the evidence will show that these two vessels, TOTE's
 10 two vessels, are indeed less risky, less burdensome,
 11 less difficult to operate than the typical vessel
 12 that -- cargo vessel that PSP services. And this is
 13 for reasons directly related to how tonnage is
 14 calculated by the international versus the domestic
 15 approaches, and for other reasons as well.
 16 PSP apparently will make no case about the rate
 17 shock and gradualism. There's no evidence that we
 18 see in the record in this proceeding addressing that
 19 point that the Commission wanted additional argument
 20 presentation about. In our view, that reason --
 21 that's reason enough right there for the Commission
 22 to ultimately agree with us.
 23 TOTE will ask the Commission, respectfully, to
 24 rule based on the arguments raised in TOTE's petition
 25 and the limited additional evidence at this hearing

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1 that, one, the funds that the Commission directed PSP
 2 to hold in a regulatory liability account, which PSP
 3 has confirmed it is indeed holding, be released to
 4 TOTE because they've always been improper. In other
 5 words, PSP has collected these hundreds of thousands
 6 of dollars in higher pilotage fees. It has got them
 7 in the bank. And they should now be released to
 8 TOTE. Why? Because they should never have been paid
 9 by TOTE to PSP in the first place.

10 Two, that Item 300 be amended to address all
 11 vessels PSP might service, including strictly
 12 coastwise vessels, which may or may not have an ITC,
 13 an international tonnage certificate, such that
 14 strictly coastwise vessels be assessed their pilotage
 15 fees based on their domestic tonnage rates.

16 And lastly, to the extent any future rate
 17 increases for these two vessels are allowed and
 18 authorized by the Commission, that they be gradual
 19 and not create the rate shock that TOTE has
 20 experienced.

21 I thank you very much for an opportunity to
 22 participate in this and look forward to presenting
 23 TOTE's case to you. Thank you.

24 JUDGE HOWARD: All right. Thank you.
 25 Let's turn to the cross-examination of

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1 witnesses.

2 Our first witness is PSP's witness, Captain
 3 Eric Klapperich. PSP and TOTE, I will note, have
 4 proposed having the portion of Captain Klapperich's
 5 cross-examination that was focused on vessel tonnage
 6 issues and the TOTE issue occur this afternoon and
 7 have the TOTE witnesses immediately follow that
 8 examination.

9 So we will call Captain Klapperich for
 10 non-vessel tonnage issues.

11 Is someone raising a question?

12 MR. BLOCK: Yes, Your Honor. May I ask a
 13 question about the witness order?

14 JUDGE HOWARD: Certainly.

15 MR. BLOCK: Thank you. As I understand it,
 16 Captain Klapperich will go first. It looks like, in
 17 the table you sent us, that TOTE's two witnesses will
 18 follow him.

19 Is that not what you intended to -- should we
 20 still expect him to go tonight -- this afternoon?

21 JUDGE HOWARD: Yeah. TOTE's two witnesses
 22 would follow Captain Klapperich this afternoon, when
 23 he is recalled to be crossed on the vessel tonnage
 24 issue. So we'll bring him back after lunch for the
 25 TOTE issue, and then TOTE's witnesses will follow

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1 him.

2 So the order of presentation has to be read in
 3 light of these footnotes. It's a bit of a mess.

4 MR. BLOCK: Thank you.

5 And one other question. There is one TOTE
 6 witness, Atalie Dubs, who no other party has
 7 requested to cross-examine. Do I need to get her
 8 here for the purpose of just affirming that her
 9 written testimony is adopted and on the record? Or
 10 if the Commissioners don't have questions for her, do
 11 we need her to appear at all? She is standing by. I
 12 just need to tell her.

13 JUDGE HOWARD: I -- it is normally my
 14 practice to ask, if no parties indicated cross,
 15 whether there are any bench questions for this
 16 witness. I think I will confer with the
 17 Commissioners and see if there are any bench
 18 questions for this witness. I'm not aware of any at
 19 this time. But I will -- I will let you know
 20 following our first break.

21 COMMISSIONER RENDAHL: I don't believe we
 22 have any. I can say that right now.

23 CHAIR DANNER: Judge Howard, I have no
 24 questions for that witness.

25 JUDGE HOWARD: In that event, Atalie Dubs

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1 would be excused from attending.

2 MR. BLOCK: Thank you. Thank you.

3 JUDGE HOWARD: All right. Can
 4 Captain Eric Klapperich turn on his video feed and
 5 I'll swear you in.

6 THE WITNESS: Yeah.

7 JUDGE HOWARD: All right. And I would
 8 invite any witness, if I am saying your name
 9 incorrectly, please let me know the correct way to
 10 say it. And if I overlook someone's title as a
 11 captain, please let me know as well.

12 Please raise your right hand and I'll swear you
 13 in.

14 * * * * *

15 CAPTAIN ERIC KLAPPERICH, having been first duly
 16 sworn, was examined and
 17 testified as follows:

18 THE WITNESS: I do.

19 JUDGE HOWARD: Thank you. Mr. Haglund,
 20 would you please introduce the witness and tender him
 21 for cross-examination.

22 MR. HAGLUND: Yes. And I'll -- I wanted to
 23 point out, Your Honor, that for the TOTE related
 24 questions of Captain Klapperich, my colleague,
 25 Mr. Brickenstein, will handle any redirect.
 But, Captain Klapperich, did you prepare

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1 original and rebuttal testimony in this proceeding?
 2 THE WITNESS: Yes, I did.
 3 MR. HAGLUND: Is it true and correct to the
 4 best of your knowledge?
 5 THE WITNESS: Yes.
 6 MR. HAGLUND: We tender the witness for
 7 cross-examination, and I will allow Mr. Brickenstein
 8 to take my seat.
 9 JUDGE HOWARD: All right. Thank you.
 10 So, Mr. Haglund, just to clarify.
 11 Mr. Brickenstein is handling all of the redirect and
 12 the examination of this witness?
 13 MR. HAGLUND: No. I may have gotten
 14 confused, Your Honor. We're -- this is not the TOTE
 15 related issue. I was confused by your footnote. So
 16 I will handle the redirect of Captain Klapperich. I
 17 am not shifting my seat.
 18 JUDGE HOWARD: Okay. All right.
 19 All right. PMSA indicated cross for this
 20 witness and you may proceed. I would ask that PMSA
 21 reserve any questions on vessel tonnage issues for
 22 this afternoon, after lunch.
 23 MS. DeLAPPE: Thank you. And just to
 24 clarify, PMSA will have no questions on that topic.
 25 If that makes things easier.

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1 JUDGE HOWARD: Okay. Thank you.
 2 CROSS-EXAMINATION
 3 BY MS. DeLAPPE:
 4 **Q. Good morning, Captain Klapperich.**
 5 A. Morning.
 6 **Q. You testified in Exhibit ECK-1T, that Puget Sound**
 7 **Pilots provide consistently error-free performance in**
 8 **their pilotage service; correct?**
 9 A. Puget Sound Pilots's record speaks for itself, yes.
 10 **Q. Captain Klapperich, could you turn to page 40 of your**
 11 **initial testimony?**
 12 A. Yep.
 13 **Q. And do you see there at line -- starting at line 4,**
 14 **the sentence in which you said it provides**
 15 **consistently error-free performance? Just so I make**
 16 **sure that we are in agreement.**
 17 A. Yes. It's in my testimony that we at PSP pilots
 18 consistently error-free performance of -- enables
 19 commerce to function at our district's economically
 20 vital container terminals, while simultaneously
 21 protecting the cultural heritage and natural
 22 resources that share the waterway.
 23 **Q. Thank you.**
 24 MS. DeLAPPE: Is the exhibit sharing
 25 occurring on the Puget Sound Pilots's side?

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1 JUDGE HOWARD: Yes. I believe so. I would
 2 ask that PSP hold off on sharing exhibits and just
 3 allow Ms. DeLappe to conduct her cross, unless she
 4 requests that.
 5 MS. DeLAPPE: I appreciate it. Thank you.
 6 Kind of makes everything change on my screen.
 7 BY MS. DeLAPPE:
 8 **Q. All right. So when PMSA asked you,**
 9 **Captain Klapperich, for the basis for that statement,**
 10 **you said that this is evidenced by the almost total**
 11 **lack of casualties involving vessels under pilotage**
 12 **on the Puget Sound pilotage district; correct?**
 13 A. Where is that? I'm sorry.
 14 **Q. If you would like to look at Exhibit ECK-14X,**
 15 **page 10, and your response on that page.**
 16 A. Can you pull that up, actually?
 17 **Q. Captain Klapperich, isn't that --**
 18 **Isn't that basically what you were just saying**
 19 **earlier, that it's evidenced by your record, by PSP's**
 20 **record?**
 21 A. What is evidenced?
 22 **Q. The consistently error-free performance.**
 23 A. Yes.
 24 **Q. Okay. I think we're on the same page.**
 25 **If you could then please turn to Exhibit IC-17X?**

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1 A. Yep.
 2 **Q. And please turn to page 5 of that exhibit.**
 3 A. Okay.
 4 **Q. Do you see there a response from Captain Carlson that**
 5 **PSP, since at least 1999, has had no significant oil**
 6 **spills that have occurred in the Puget Sound pilotage**
 7 **district involving an allision, collision, or**
 8 **grounding of a foreign flag vessel while under**
 9 **pilotage by a PSP pilot?**
 10 A. Yeah. I have that.
 11 **Q. Would you say that your assessment of an almost total**
 12 **lack of casualties is consistent with**
 13 **Captain Carlson's statement?**
 14 A. Yes.
 15 **Q. Thank you. Of course you personally have not been at**
 16 **PSP since 1999; correct?**
 17 A. I have not.
 18 **Q. You started your association with PSP with the 2005**
 19 **exam?**
 20 A. Correct.
 21 **Q. And then you became licensed in 2008?**
 22 A. Correct.
 23 **Q. Since you have -- for the period since you have been**
 24 **associated with PSP, no pilot has ever experienced a**
 25 **grounding, an allision, or a collision resulting in**

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1 **an oil spill; correct?**
 2 A. Correct.
 3 **Q. Let's turn then to Exhibit SM-12X. And when you get**
 4 **there, if you can please turn to page 31.**
 5 **And I will represent to you that these are PMSA**
 6 **data requests that were presented to Mr. McCarthy.**
 7 A. Yes.
 8 **Q. So on this page and on the following two pages,**
 9 **basically, Mr. McCarthy responds that no insurance**
 10 **claims have been paid as a result of a PSP-involved**
 11 **vessel collision or grounding or an oil spill,**
 12 **resulting from anything -- any incident; correct?**
 13 A. I -- I don't know. If you could -- I don't know
 14 that. I don't know what -- I don't have that answer.
 15 Correct.
 16 **Q. So --**
 17 A. Could you ask the question again?
 18 **Q. Are you at Exhibit SM-12X?**
 19 A. Yeah.
 20 **Q. And do you see on page 1 that the witness is**
 21 **Sean McCarthy?**
 22 A. Yeah. I don't know Sean -- what Sean McCarthy has
 23 paid.
 24 **Q. You don't know who Sean McCarthy is?**
 25 A. No. I know who Sean McCarthy is.

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1 **Q. Do you see that he is the responder, along with Puget**
 2 **Sound Pilots, to these requests?**
 3 A. Yes.
 4 **Q. And if you turn to page 31 of this exhibit.**
 5 A. Yes. That's where I'm at. The data request 609 is
 6 what I have.
 7 **Q. Great. And so you can see it says, "Of all claims**
 8 **paid in the last ten years, please identify all**
 9 **claims paid as a result of a Puget Sound Pilot**
 10 **collision."**
 11 **Do you see that --**
 12 A. Yes.
 13 **Q. -- question?**
 14 A. Yes. And I see the response as "none."
 15 **Q. None. Okay.**
 16 **And then similarly on the next page, "No claims**
 17 **were paid" on -- "as a result of a Puget Sound pilot**
 18 **grounding"; correct?**
 19 A. If that's his testimony, yes. It says none.
 20 **Q. Are you skeptical of whether his -- the veracity of**
 21 **his testimony, Captain Klapperich?**
 22 A. I don't have claims in front of me. And I'm relying
 23 on his testimony. I don't have --
 24 **Q. And have I asked you whether you agree with him or**
 25 **whether you --**

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1 A. No.
 2 **Q. -- are testifying to these facts yourself? I'm just**
 3 **asking you to look at what he wrote; right?**
 4 A. Okay. Yes.
 5 **Q. And you see what he wrote?**
 6 A. Yes.
 7 **Q. And is it -- can you just tell me whether that is**
 8 **consistent with your assessment of an almost total**
 9 **lack of casualties?**
 10 A. I don't -- I don't know what his testimony is saying
 11 with -- I don't have the records. I don't have
 12 claims. I don't have anything in front of me.
 13 **Q. So, Captain Klapperich, all I'm asking is if there**
 14 **are no claims for insurance coverage for any of these**
 15 **types of incidents --**
 16 A. That I'm aware of.
 17 **Q. -- is that consistent with -- and I'm not asking you**
 18 **if that is true, but assuming that Sean McCarthy**
 19 **answered correctly here, is that consistent with your**
 20 **testimony?**
 21 A. My testimony is -- yes. It's consistent with our
 22 record.
 23 **Q. Thank you.**
 24 **If I could also refer you, then, to Captain**
 25 **Mitch Stoller's -- I will just represent to you,**

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1 **because I'm not asking you about the fact that we**
 2 **asked Captain Mitch Stoller, but in Exhibit MSS-20X,**
 3 **at page 20, when asked about whether Puget Sound**
 4 **Pilots's current casualty prevention capability is**
 5 **substandard, he said no.**
 6 **The question for you, Captain Klapperich, is**
 7 **whether you agree.**
 8 A. That's his testimony.
 9 **Q. Do you agree that Puget Sound Pilots's current**
 10 **casualty prevention capability is not substandard?**
 11 A. I agree our current casualty prevention capability is
 12 at a national level.
 13 **Q. Thank you.**
 14 JUDGE HOWARD: Ms. DeLappe, just to clarify,
 15 was that page 18 of MSS-20X?
 16 MS. DeLAPPE: Thank you. Yes.
 17 JUDGE HOWARD: All right. Thank you.
 18 BY MS. DeLAPPE:
 19 **Q. So in your opinion, Captain Klapperich, would you**
 20 **agree that having zero oil spills resulting from**
 21 **allisions, collisions, or groundings for a period of**
 22 **over two decades is an exceptional record of safe**
 23 **vessel operations?**
 24 A. I would say we have a good record.
 25 **Q. And you'd say the same for zero allisions,**

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1 collisions, or groundings for over a decade for Puget
 2 Sound Pilots?
 3 MR. HAGLUND: Objection. Do you -- you're
 4 not referencing an oil spill in those questions, is
 5 it -- are you asking him for allisions, collisions in
 6 the last 20 years?
 7 MS. DeLAPPE: Correct.
 8 BY MS. DeLAPPE:
 9 **Q. The -- the second question is asking just that we've**
 10 **established there's -- there have been no allisions,**
 11 **collisions, or groundings for the last ten years;**
 12 **correct?**
 13 A. That's not true.
 14 **Q. So you believe that there have been PSP-piloted**
 15 **allisions, collisions, and groundings in the last**
 16 **decade?**
 17 A. If I'm not mistaken. I don't know the dates. But I
 18 think we've had a -- an allision in the last ten
 19 years.
 20 **Q. Okay. But still, even if it's just one in the last**
 21 **ten years, would you agree that that is an**
 22 **exceptional safety record?**
 23 A. I just let it speak for itself.
 24 JUDGE HOWARD: I'm going to jump in and I'm
 25 going to say that Ms. DeLappe is entitled to an

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1 answer to that question.
 2 MS. DeLAPPE: Thank you.
 3 THE WITNESS: Could you repeat yourself,
 4 please? Or your question. I'm sorry.
 5 BY MS. DeLAPPE:
 6 **Q. Captain Klapperich, I just wanted you to say whether**
 7 **you believe that that is an exceptional safety**
 8 **record.**
 9 A. PSP has a good safety record.
 10 **Q. Okay. Thank you.**
 11 **I'd like to turn to your testimony, again,**
 12 **Exhibit ECK-01T, and this time at page 22.**
 13 A. Yeah.
 14 **Q. And this is -- I'm going to be asking you a few**
 15 **questions about your opinion regarding the training**
 16 **of PSP pilots --**
 17 A. Okay.
 18 **Q. -- that have created this impeccable track record.**
 19 **On this page starting at line 5, you testify that**
 20 **in your opinion the process to become a Puget Sound**
 21 **pilot is absolutely necessary to ensure that every**
 22 **one of PSP's members possesses the elite skill,**
 23 **knowledge, and judgment that are required to ensure**
 24 **the best possible protection of our district's**
 25 **waterways; correct?**

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1 A. I did say the process. Yes. It's a process.
 2 **Q. I almost read verbatim. I just changed the first**
 3 **person to the second person; correct? Those were**
 4 **your words?**
 5 A. Yes.
 6 **Q. Thank you.**
 7 **In other words, so to paraphrase that, every**
 8 **Puget Sound pilot must go through a training program,**
 9 **and because of that, each pilot possesses the elite**
 10 **skills necessary to ensure the best possible**
 11 **protection of the Puget Sound waterways; right?**
 12 A. In addition -- it's a process and begins with
 13 attracting national candidates from a diverse
 14 maritime background. And, in addition, they go
 15 through training, test taking and training to become
 16 pilots. It's a process.
 17 **Q. So when we look at your opinion on -- on page 22,**
 18 **would you agree that your opinion there is that each**
 19 **current Puget Sound pilot has been trained to an**
 20 **elite level?**
 21 A. Again, it's a process. And that's what I said in
 22 there. And the process -- I'm trusting the process
 23 and --
 24 **Q. Captain Klapperich, you are not responding to my**
 25 **question. I will repeat it.**

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1 **It is your opinion, correct, that each current**
 2 **Puget Sound pilot has been trained to an elite level?**
 3 A. I don't -- I don't pilot with them when they're on a
 4 loaded tanker in Guemes Channel. I can't -- I'm
 5 trusting the process that they go through, training,
 6 and our record speaks for itself. They are elite
 7 mariners. They learn the skills through training and
 8 evaluation and everything, and they are -- I don't
 9 pilot with them to assess what level or anything. I
 10 let the record speak for itself.
 11 **Q. And, Captain Klapperich, so when you say "them," can**
 12 **I just clarify, you're talking about your fellow**
 13 **licensed pilots, that you're not sure whether they're**
 14 **actually trained -- have been trained to an elite**
 15 **level?**
 16 A. I'm -- it's a process. And I'm trusting the process.
 17 Yes. They are elite mariners.
 18 **Q. Your fellow pilots are elite mariners, they have been**
 19 **trained to an elite level; correct?**
 20 A. Yes. They possess the -- the skills, yes.
 21 **Q. And is it your opinion that by training each of these**
 22 **pilots to an elite level, the best possible**
 23 **protection of the Puget Sound waterways is ensured?**
 24 A. Well, PSP is going to continue to strive to attract
 25 the -- the best candidates and the best pilots.

1 **Q. Captain Klapperich, I will again repeat my question.**
2 **This would be a lot easier if you would focus on**
3 **answering what I'm actually asking.**

4 **Is it your opinion that by training each current**
5 **Puget Sound pilot to an elite level, the best**
6 **possible protection of the Puget Sound is ensured?**

7 A. Yes.

8 **Q. Thank you.**
9 **If we can then look to Exhibit ECK-14X.**

10 A. I don't think I have that one, the 14X.
11 Oh, I have it right here. Yes, I have it,
12 Ms. DeLappe.

13 **Q. Thank you.**
14 **So if you could turn to page 6, please.**

15 A. I think I have the right one.

16 **Q. And you should see that these are PMSA data requests.**

17 MR. HAGLUND: Is that data request 558,
18 Ms. DeLappe?

19 MS. DeLAPPE: Correct. Thank you.

20 MR. HAGLUND: Do you have that, Captain?

21 THE WITNESS: I do right here. I have it
22 here.

23 MR. HAGLUND: Do you need a copy?

24 THE WITNESS: Nope. I have it right here.
25 I have it.

1 **And so in your experience, which is now 14 years**
2 **at PSP, do you know of any circumstances where**
3 **individuals made it through the exam process and made**
4 **it to the trainee list, but those potential trainee**
5 **candidates were not the most highly-skilled**
6 **candidates?**

7 A. I -- I don't -- no. I do not know that.

8 **Q. And so in your experience, if a trainee has made it**
9 **through the Puget Sound pilot exam process, they are**
10 **the most highly skilled of the candidates; correct?**

11 A. If they made it through the training program,
12 they're -- could you say that again, please?

13 **Q. Then they are the most highly skilled of the**
14 **candidates, if they've made it through the exam**
15 **process.**

16 A. Yes. I would.

17 **Q. So similarly, regarding potential pilots who are past**
18 **the exam and in the training process, after**
19 **completing the training process, that each Puget**
20 **Sound pilot possesses the elite skills necessary to**
21 **ensure the best possible protection of the Puget**
22 **Sound; correct?**

23 A. I think that that's -- you're asking me if I know if
24 I've trained them; is that correct?

25 **Q. No. That is not. Thank you for clarifying.**

1 BY MS DeLAPPE:

2 **Q. So when you were asked to describe the basis for this**
3 **same opinion that you've just testified to, you can**
4 **see your response there at the bottom of the page?**

5 A. Yeah.

6 **Q. You said, "Between their time as a trainee, through**
7 **becoming an unlimited pilot and beyond, pilots**
8 **continue to acquire knowledge and skills required to**
9 **provide the best achievable protection for the Puget**
10 **Sound"?**

11 A. Yes.

12 **Q. And then you go on to talk about the training;**
13 **correct?**

14 A. Yes.

15 **Q. And -- and at the end, you said the PSP's track**
16 **record speaks for itself and that you decline to**
17 **critique individual PSP pilots; correct?**

18 A. Yeah.

19 **Q. Thank you.**
20 **So I recognize from your -- that answer and your**
21 **other testimony, that you are reluctant to critique**
22 **other pilots. But for the purpose of**
23 **cross-examination, I'd like to ask you a few**
24 **follow-up questions to just test your testimony on**
25 **that.**

1 **I'm just asking whether it is your testimony that**
2 **after completing that training process, each Puget**
3 **Sound pilot possesses the elite skills necessary to**
4 **ensure the best possible protection of the Puget**
5 **Sound?**

6 A. I am trusting the process.

7 **Q. So in your experience, now 14 years with --**

8 A. Yeah.

9 **Q. -- PSP, do you know of any circumstances where**
10 **individuals made it through the entire training**
11 **process and became licensed, but somehow did not**
12 **possess the skills necessary to pilot?**

13 A. I don't know that.

14 **Q. And after -- in your experience, have you seen any**
15 **erosion in the skills of the pilots that have**
16 **completed training?**

17 A. No.

18 **Q. Or have the licensing standards that the BPC creates**
19 **and enforces, have they become anything less than**
20 **they were previously?**

21 A. I would say the erosion is at the number of people
22 that actually take our test --

23 **Q. Captain Klapperich?**

24 A. And then --

25 **Q. My question is not about the number of candidates. I**

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1 would like you to answer my question, which is about
 2 the licensing standards.
 3 Have those standards eroded in any way?
 4 A. Are you talking about the BPC's standards?
 5 **Q. Correct.**
 6 A. I don't -- I don't think so.
 7 **Q. Thank you.**
 8 So in your experience, have the exams, the
 9 trainee exams, become easier?
 10 A. I --
 11 MR. HAGLUND: Object --
 12 THE WITNESS: I don't know that. I'm not
 13 taking the trainee exams.
 14 BY MS. DeLAPPE:
 15 **Q. So in your experience, there is nothing that you**
 16 **would say that would --**
 17 A. I don't know.
 18 **Q. Thank you.**
 19 A. I don't know that.
 20 **Q. And is there anything about the pilot training**
 21 **program that has become easier, to the best of your**
 22 **knowledge?**
 23 A. I don't know that either.
 24 **Q. Moving on, then, to my next topic.**
 25 **If you could turn to -- to make this a little**

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1 simpler, you don't have to turn to it. I will just
 2 reference that I am reading from Captain -- I mean
 3 Executive Director Costanzo's testimony, and that's
 4 Exhibit CPC-01T, page 3.
 5 I would just like to know whether you agree with
 6 the opinion that "The State of Washington has been
 7 the most aggressive state regulator in the U.S. in
 8 areas of spill prevention and response."
 9 A. That's -- that's just -- that's Charlie's testimony.
 10 That's --
 11 **Q. Do you agree with his testimony?**
 12 A. I -- I haven't read it. I don't know it. I don't
 13 have an opinion about it.
 14 **Q. So you have no opinion about whether the State of**
 15 **Washington is the most aggressive state regulator on**
 16 **oil spill prevention?**
 17 A. I -- I've never done a comparison.
 18 **Q. Do you have no opinions, then, regarding oil spill**
 19 **response programs in the nation?**
 20 A. I haven't studied oil spill response programs in the
 21 nation.
 22 **Q. But you have discussed best available protection for**
 23 **the Puget Sound waterways, is that not --**
 24 A. Yes.
 25 **Q. -- involving oil spills?**

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1 A. It's local, yes. It's our Washington state.
 2 **Q. Okay. So if we look at what the Department of**
 3 **Ecology has stated -- and I'll, again, just represent**
 4 **to you that this is in Mr. Costanzo's testimony at**
 5 **page 20, "Washington has one of the lowest oil spill**
 6 **rates in the nation because we have such a strong**
 7 **safety" protection -- prevention net, one of the most**
 8 **comprehensive spill prevention, preparedness, and**
 9 **response programs in the nation and world."**
 10 **Do you have any reason to disagree with that?**
 11 A. Again, it's Charlie's testimony -- it's
 12 Mr. Costanzo's testimony.
 13 **Q. Captain Klapperich, I'm asking, do you have any**
 14 **reason to disagree with that?**
 15 A. I can't -- are you asking me to compare it? Or...
 16 **Q. I'm asking whether there is anything that you know of**
 17 **that would indicate that that is incorrect.**
 18 A. I'm having a hard time speaking on behalf of
 19 Mr. Costanzo's testimony.
 20 **Q. I am not asking you to speak on his behalf. I am**
 21 **asking about your own knowledge. And I will take the**
 22 **fact that you cannot think of anything as an answer**
 23 **that you have no reason to disagree.**
 24 **Is that fair?**
 25 A. That's -- I have -- I don't have a reason to disagree

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1 with Charlie's testimony.
 2 **Q. Thank you.**
 3 Turning then to -- I would like to look at the
 4 experience of state and federally licensed pilots.
 5 And do you have any reason to believe that PSP
 6 would pilot at all differently based on how much an
 7 individual vessel pays for its pilotage service?
 8 A. I'm not -- I'm sorry. I don't understand your
 9 question.
 10 **Q. In your experience as a member of PSP, do you believe**
 11 **that there is any situation where any member of PSP**
 12 **would purposefully provide an unsafe service to a**
 13 **vessel based on how much that vessel is paying on its**
 14 **PSP invoice?**
 15 A. I think you're -- I can only answer on behalf of,
 16 like, a tariff design or something.
 17 **Q. That's not my question.**
 18 **It's a -- I am asking if -- if a specific vessel,**
 19 **just to illustrate this.**
 20 **Let's say there are two vessels that call on the**
 21 **Puget Sound and one is -- and, you know, both of them**
 22 **are met by a pilot at Port Angeles to go to the Port**
 23 **of Seattle. The first vessel pays \$10,000 for**
 24 **pilotage based on the tariff. The second vessel pays**
 25 **\$13,500 for the same pilotage assignment.**

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1 **Would the pilot on the first assignment that pays**
2 **\$10,000 to PSP owe the same duties, standards of**
3 **care, attention to safety, and level of service as**
4 **the pilot on the second assignment where PSP receives**
5 **more?**
6 A. Yes.
7 **Q. Thank you. I just want to turn quickly to one last**
8 **topic regarding climate change.**
9 **In your testimony, would you agree that you did**
10 **make some -- bring some opinions about climate**
11 **change; correct?**
12 A. I did, yes.
13 **Q. And so if we turn to page 35 of your testimony, we'll**
14 **see that you stated, starting at line 9 -- I'll just**
15 **read that.**
16 **"Assuming that the scientific forecast regarding**
17 **the effects of climate change on the Puget Sound area**
18 **is accurate, there is no question that increased**
19 **frequency and intensity of severe weather events will**
20 **make piloting on the district's exposed waterways**
21 **even more challenging"; correct?**
22 A. Yes.
23 **Q. And for this opinion you relied on two studies;**
24 **right?**
25 A. I read -- I went through two studies and submitted

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1 them.
2 **Q. And you cited -- you cited those studies --**
3 A. Yes.
4 **Q. -- in your testimony?**
5 A. Yes.
6 **Q. So the first study, Exhibit ECK-07 --**
7 A. Yeah.
8 **Q. -- that's the Ruggiero study?**
9 A. Yeah.
10 **Q. I'm not sure if I'm pronouncing that correctly.**
11 **R-U-G-G-I-E-R-O.**
12 A. Yes.
13 **Q. Entitled "Increasing Wave Heights and Extreme Value**
14 **Projections."**
15 A. Yes.
16 **Q. And then the second study was from University of**
17 **Washington, Exhibit ECK-08, "Climate" --**
18 A. Yeah.
19 **Q. -- "Change in Puget Sound."**
20 A. Yes.
21 **Q. Thank you.**
22 **So turning first to the Ruggiero study, would you**
23 **agree that there is no mention of the Puget Sound in**
24 **that study?**
25 A. Sorry. Which study? The first one?

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1 **Q. Yes.**
2 A. 07. I would agree with that, yes.
3 **Q. Okay. And in fact, so that study was based off of --**
4 **offshore deepwater wave buoys; correct?**
5 A. Yes, yes.
6 **Q. And those buoys are located about 400 kilometers west**
7 **of the mouth of the Columbia River?**
8 A. Yes. Well, I thought there was one further north,
9 but, yes, they're offshore.
10 **Q. If we look at ECK-07, page 2, you can see where it**
11 **says on that page that the buoys are located about**
12 **400 kilometers west.**
13 A. Yes.
14 **Q. I understand you don't necessarily have that**
15 **memorized.**
16 A. Right. But I know what you're talking about, yes.
17 **Q. So neither of those buoys are in the Puget Sound**
18 **pilottage district; correct?**
19 A. Correct.
20 **Q. And they're not really even close; right?**
21 A. Correct.
22 **Q. Let's turn then to ECK-08, the University of**
23 **Washington study.**
24 A. Okay.
25 **Q. And if you could please turn -- well, let's go back**

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1 **to page 35 of your testimony.**
2 You -- you discuss that University of Washington
3 study at line 6 on page 35. And you say that the --
4 specifically the University of Washington report
5 explains that the Pacific Northwest and Puget Sound
6 are highly likely to experience increasingly intense
7 weather events as climate change progresses; right?
8 A. Yep.
9 **Q. But you don't offer any specific citation or**
10 **reference to support that, just the whole study;**
11 **right?**
12 A. I took some things from the whole study.
13 **Q. Let's go, then, to that study.**
14 **If you could turn to ECK-08 at page 72. Let me**
15 **know when you're there.**
16 A. I didn't print that whole study off. We have it
17 right here. Hang on a second.
18 **Q. Glad you have help. So page 72, please.**
19 A. Yeah. Yep.
20 **Q. And if you're there, please look down the page to the**
21 **second observed heading.**
22 A. Yeah. Yep.
23 **Q. And do you see there that it says, in bold, at the --**
24 **"There is no evidence of a change in storm surge in**
25 **Puget Sound and research is lacking regarding changes**

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1 in wave heights."
 2 Do you see that?
 3 A. Yep.
 4 Q. And then the bullet points after that, there are
 5 three bullet points I'd like to direct your attention
 6 to.
 7 A. Yep.
 8 Q. So it goes onto the next page.
 9 And I'll just read, for time sake, the italicized
 10 part.
 11 "There is no evidence of a long-term trend in
 12 storm surge." And then on the next bullet point, "It
 13 is not known how waves within Puget Sound will change
 14 in the future." And in the third one, "Observed
 15 trends in wind speed are ambiguous."
 16 Would you agree that the -- the University of
 17 Washington study does not make any scientific
 18 forecast regarding the effects of climate change on
 19 wave action in the Puget Sound?
 20 A. I was under the impression with the outline of the
 21 map in the other study, it had an outline of areas
 22 affected that daily weather patterns were not
 23 significantly increasing over the years.
 24 However, the -- the storm was a small change of
 25 increase and intensity. But the -- what the buoys

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1 were also registering were --
 2 Q. Captain Klapperich, I understand that you are talking
 3 about the Ruggiero study. My question -- I'm waiting
 4 for you to get to the part where you answer my
 5 question, which is: Would you agree that the
 6 University of Washington study about the Puget Sound
 7 does not make any scientific forecast regarding the
 8 effects of climate change on wave action in the Puget
 9 Sound?
 10 A. On wave action, yes.
 11 Q. And while it's certainly possible that climate change
 12 may ultimately change conditions on the Puget Sound,
 13 would you agree that on the basis of these two
 14 studies, there's no clear scientific basis at this
 15 time for making a conclusion that -- the future
 16 effects of climate change in the Puget Sound?
 17 A. I don't agree with that.
 18 Q. Then please point me to the part of the -- we've
 19 already established the Ruggiero study has nothing
 20 specific to the Puget Sound; correct?
 21 A. I don't -- I don't agree with that.
 22 Q. So --
 23 A. If you go to --
 24 Q. -- you already testified earlier that there's no
 25 mention of the Puget Sound, correct, in the --

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1 A. -- there --
 2 Q. -- in the Ruggiero study?
 3 A. There actually is an outline showing where the buoys
 4 are, and it encapsulates Puget Sound.
 5 Q. And those buoys are 400 kilometers west of --
 6 A. Yes.
 7 Q. -- Columbia River; correct?
 8 A. Yes. Yeah. Well, I'm going by where the buoys are
 9 on the picture. And the outline shows Puget Sound
 10 encapsulated, if you will, or surrounded by a dotted
 11 line. And I'm assuming weather moves that way
 12 towards Puget Sound from the buoys and that's why
 13 they have captured Puget Sound in the document --
 14 Q. So you're referring, Captain Klapperich, to page 2,
 15 the fact that there is a map on that page that shows
 16 where the two buoys are?
 17 A. Yeah. The two buoys are there. And I'm just -- I
 18 took into consideration that outline was -- what was
 19 included. That's all.
 20 Q. And so you --
 21 A. Puget Sound --
 22 Q. And Captain Klapperich, you're not a climate
 23 scientist; correct?
 24 A. I am not.
 25 Q. Okay. So your reliance on this is on this picture?

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1 That's why you relied on this as saying something
 2 about the Puget Sound?
 3 A. I am relying on this area that the buoys were in, and
 4 they considered the area of Puget Sound as well.
 5 Q. Are you -- can you point to that part of the text
 6 where they said they considered the Puget Sound?
 7 A. No. It says the Pacific Northwest.
 8 Q. It doesn't say the Puget Sound, does it?
 9 A. Well, it does on the picture. It includes it.
 10 Q. It doesn't say Puget Sound, does it?
 11 A. Not that I'm aware of.
 12 Q. And the University of Washington study is specific to
 13 the Puget Sound; correct?
 14 A. Yes.
 15 Q. And then we already have discussed what was observed
 16 in the Puget -- in the Puget Sound study, the
 17 University of Washington study; correct?
 18 A. Yes.
 19 MS. DeLAPPE: I have no further questions.
 20 JUDGE HOWARD: All right. Thank you.
 21 Do we have any redirect?
 22 MR. HAGLUND: Yes, Your Honor.
 23 Mr. Crandall, could you put on the screen that
 24 page that Captain Klapperich was just discussing
 25 which I think is page 2 of Exhibit ECK -- is it 02?

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1 THE WITNESS: 07.
 2 MR. HAGLUND: 07. And could you pull out
 3 the upper part, including the caption for that map
 4 that is on page 2 of this study.
 5 REDIRECT EXAMINATION
 6 BY MR. HAGLUND:
 7 **Q. In your experience, Captain Klapperich, would you**
 8 **expect ocean conditions, as registered by the two**
 9 **buoys that are west of Oregon and Southwest**
 10 **Washington, not terribly far from Puget Sound, that**
 11 **those buoy readings would be indicative of whether**
 12 **that would impact Puget Sound?**
 13 A. Yes, including the outline and how severe weather
 14 patterns and a lot of weather patterns move in a
 15 northeasterly fashion.
 16 **Q. And did you take this map as indicating that the buoy**
 17 **data from those two buoys should be taken into**
 18 **consideration in terms of potential increases in --**
 19 **in storm intensity within the zone that includes your**
 20 **Puget Sound waterways?**
 21 A. Yes.
 22 **Q. And it was on this basis, with this map and the**
 23 **discussion of -- in the paper itself regarding**
 24 **increased storm intensity arising from climate change**
 25 **that led you to make the statements you did in your**

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1 **testimony regarding climate change as a factor?**
 2 A. Yes.
 3 **Q. And do you know, from just your observations in the**
 4 **last several years, that storm intensity is**
 5 **increasing and it's attributable in large measure to**
 6 **climate change?**
 7 A. In -- in my time as a pilot for 15 years, I feel like
 8 weather is more severe than what is predicted.
 9 That's just my personal experience.
 10 **Q. And is that a risk factor that you have to take into**
 11 **account when you're preparing to perform jobs that,**
 12 **in preparation for the assignment, require you to**
 13 **examine the weather conditions, et cetera, that**
 14 **relate --**
 15 MS. DeLAPPE: Objection. Outside of scope.
 16 I asked nothing about that topic.
 17 JUDGE HOWARD: I -- I'm going to allow the
 18 question.
 19 THE WITNESS: Weather is a major
 20 consideration. We go through more than one weather
 21 pattern, or can go through more than one weather
 22 pattern in a single transit. And we have to know, to
 23 the best of our ability, what we will be approaching
 24 or dealing with in our waterway transits in our
 25 approaches to the harbors.

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1 BY MR. HAGLUND:
 2 **Q. In your day-to-day work as a pilot, how would you**
 3 **characterize the significance of potentially severe**
 4 **weather in connection with a pilotage assignment?**
 5 A. In terms of priorities, it's a high priority. I
 6 mean, you have to consider it for a lot of job prep.
 7 And it's just a priority of every job, especially
 8 during our winter months.
 9 **Q. Could you -- so that you can make sure that this is**
 10 **understood in context by the Commissioners, could you**
 11 **just give an example of the type of preparation you**
 12 **do for an assignment where you know stormy conditions**
 13 **are likely?**
 14 **What exactly do you do in connection with your**
 15 **preparation?**
 16 A. So for example, transit from Port Angeles pilot
 17 station to Tacoma is 88 miles. And the weather can
 18 be significantly different in Tacoma than it is at
 19 Port Angeles. So when you prepare and do your voyage
 20 planning before you get the assignment, you will --
 21 you will research and do what you can to find out
 22 what the weather might be in five hours from Port
 23 Angeles, and that way you can prepare a number of
 24 tugboats or possibly even if you need to go to
 25 anchor, depending on your assignment.

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1 But weather is a high priority, and it weighs a
 2 lot on every assignment.
 3 **Q. Now turning to some of the other areas of your**
 4 **cross-examination.**
 5 **First, are you familiar with the allision**
 6 **involving the motor vessel Levant at the Petrogas**
 7 **chemical plant in March of 2020 that occurred while**
 8 **that vessel was under pilotage?**
 9 A. I'm aware of it.
 10 **Q. And that was a major allision that caused millions of**
 11 **dollars of damage; is that correct?**
 12 A. Yes, I believe so.
 13 **Q. To your knowledge, is the pilot who was on that**
 14 **vessel a defendant in federal litigation in Seattle**
 15 **arising out of --**
 16 MS. DeLAPPE: Objection to the leading
 17 questions, please. This is his own witness.
 18 JUDGE HOWARD: I -- I'm going to -- that
 19 question was -- was problematic. I'll allow that
 20 particular question, but I would want to be careful
 21 of being too leading with redirect.
 22 BY MR. HAGLUND:
 23 **Q. You can go ahead and answer.**
 24 A. Just repeat the question.
 25 **Q. Are you aware of the fact that there's litigation**

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1 **involving that casualty?**
 2 A. Yes. I'm aware of it. Yes.
 3 **Q. Now, in your opinion, Captain Klapperich, is there a**
 4 **relationship between the quality of trainees and**
 5 **PSP's ability to maintain its excellent safety**
 6 **record?**
 7 A. Yes.
 8 **Q. Are you concerned that low pay of the pilot corps**
 9 **will affect the quality of the trainees coming to**
 10 **Puget Sound?**
 11 A. Yes.
 12 MS. DeLAPPE: And I would just lodge an
 13 ongoing objection to all of the leading questions by
 14 PSP's counsel and PSP's witness.
 15 BY MR. HAGLUND:
 16 **Q. In your opinion, Captain Klapperich, can a training**
 17 **program turn a substandard candidate into an elite**
 18 **pilot?**
 19 A. I don't think so.
 20 **Q. Once a trainee is licensed after a lengthy training**
 21 **period, are the -- is that trainee sufficiently**
 22 **trained to handle all sizes of ships?**
 23 A. No.
 24 **Q. So does training continue during the early years of a**
 25 **pilot's career with Puget Sound Pilots?**

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1 A. Training continues throughout our careers.
 2 **Q. What's the nature of the training regimen in -- early**
 3 **in your career?**
 4 A. You have what they call simulation training, which is
 5 actually manned model training, where we go to elite
 6 training facilities in Europe or Australia.
 7 In addition, trainees and newly licensed pilots
 8 have -- and every year they have to do their
 9 upgrade -- upgrade trips, which moves them on. They
 10 have a certain amount of upgrade trips to do before
 11 their next level of piloting.
 12 In addition, we do simulator training which is in
 13 front of a computer and screen down at MITAGS. The
 14 300 -- or sorry, 270-degree bridge. We do some
 15 escort team training for pilots as soon as we can get
 16 them in there and they're licensed, and we do that
 17 training throughout our careers. But it's -- it's
 18 ongoing.
 19 **Q. Now, in your years as a pilot, have you observed that**
 20 **there are trainees who either quit or are terminated**
 21 **by the BPC?**
 22 MS. DeLAPPE: I would like to object that
 23 that is outside -- totally outside the scope of my
 24 cross-examination.
 25 MR. HAGLUND: If the training issue was

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1 brought up, it seems like it shouldn't be
 2 extraordinarily narrow in its --
 3 MS. DeLAPPE: It wasn't about --
 4 JUDGE HOWARD: I'm going to allow the
 5 question.
 6 THE WITNESS: Could you repeat it, Mike?
 7 BY MR. HAGLUND:
 8 **Q. In your years as a pilot, have you observed**
 9 **situations where trainees have either quit or washed**
 10 **out by virtue of termination by the BPC?**
 11 A. Yes.
 12 MR. HAGLUND: No further questions.
 13 MS. DeLAPPE: I do have a few questions for
 14 redirect, Your Honor.
 15 JUDGE HOWARD: Well, we -- we normally limit
 16 cross to one round for these witnesses.
 17 MS. DeLAPPE: If I may just bring up one
 18 question.
 19 MR. HAGLUND: Your Honor -- Your Honor, I
 20 haven't seen recross allowed in federal court, state
 21 court, or in rate cases.
 22 So I -- if you open the door now, I don't know
 23 why it wouldn't be permitted for PSP's counsel as
 24 well.
 25 JUDGE HOWARD: I'm going to decline to allow

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1 a second round of cross.
 2 Thank you, Mr. -- Captain Klapperich. We will
 3 be seeing you again after our lunch break for the
 4 cross-examination on the vessel tonnage issue.
 5 Our next -- you know, I believe it might be
 6 appropriate for us to take a ten-minute break, and we
 7 will then move to Captain Bendixen, who will be our
 8 next witness.
 9 So I will -- we'll all rejoin here at 11:20.
 10 We are off the record.
 11 (A break was taken from
 12 11:09 a.m. to 11:21 a.m.)
 13 JUDGE HOWARD: All right. Let's be back on
 14 the record. Returning after our break. It's
 15 11:20 a.m. Let's turn to our next witness, PSP's
 16 witness, Captain Bendixen. I see you have your video
 17 feed on. If you could raise your right hand, I'll
 18 swear you in.
 19 Do you swear --
 20 THE WITNESS: Am I muted?
 21 JUDGE HOWARD: Sorry. Go ahead.
 22 THE WITNESS: Am I muted.
 23 JUDGE HOWARD: No, I can hear you.
 24 ///
 25 ///

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1 *****

2 Captain Sandy Bendixen, having been first duly

3 sworn, was examined and

4 testified as follows:

5 THE WITNESS: I do.

6 JUDGE HOWARD: Thank you.

7 Mr. Haglund, could you please introduce the

8 witness and tender the witness for examination.

9 MR. HAGLUND: Yes, Your Honor.

10 Captain Bendixen, did you prepare original and

11 rebuttal testimony in this case?

12 THE WITNESS: Yes.

13 MR. HAGLUND: Is it true and accurate to the

14 best of your knowledge?

15 THE WITNESS: Yes.

16 MR. HAGLUND: I tender the witness for

17 cross-examination.

18 JUDGE HOWARD: All right. Thank you.

19 PMSA may proceed with your cross.

20 CROSS-EXAMINATION

21 BY MS. DeLAPPE:

22 **Q. Good morning, Captain Bendixen. You're a member of**

23 **the Board of Pilotage Commissioners; correct?**

24 A. Yes. The Washington State Board of Pilotage

25 Commission.

26 **Q. And are you the chair of the training and examination**

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1 **committee?**

2 A. The training evaluation committee, yes.

3 **Q. Training and evaluation committee?**

4 A. Yes.

5 **Q. Okay. And you're deeply involved in the training**

6 **process?**

7 A. Yes.

8 **Q. I'd like to ask you a few questions about pilot**

9 **safety and training under the BPC exam training and**

10 **licensing processes. Okay?**

11 A. Okay.

12 **Q. So when BPC -- when the BPC administers an exam, are**

13 **unqualified individuals allowed to sit for the exam?**

14 A. I can answer that question. I think it's important

15 to understand, though, what a qualified candidate is.

16 A qualified candidate to me, looking at the 2018

17 annual report for the BPC which defines it as a

18 multistep process for becoming qualified --

19 qualification, multistep qualification process.

20 So the -- it's a series of many gates to go

21 through to be a qualified pilotage training

22 candidate. The first one -- being a U.S. citizen

23 would be the first gate that you would go through.

24 And being at least 21 years old. So there's --

25 there's many levels to that. So meeting the state

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1 sea time requirements, age, things like that would be

2 a "yes" for qualified to take the exam.

3 And I wouldn't say that they're all qualified

4 candidates, but qualified to enter the first gate --

5 or the second gate. The first one would be 21 years,

6 sea time, 1600-ton master for a minimum of two years,

7 and some other ones.

8 **Q. Thank you for that clarification.**

9 **So after -- of any particular exam, does the BPC**

10 **allow individuals who did not pass the exam to be**

11 **added to the list of potential trainees?**

12 A. There's a protest process.

13 Is that what you're referring to?

14 **Q. No. Just, generally, if you -- if a -- if somebody**

15 **sits for the exam and does not pass the exam, whether**

16 **through the culmination of a protest period or**

17 **otherwise, does that person who failed the exam get**

18 **to then be added to -- nevertheless to the list of**

19 **potential trainees?**

20 A. I can only speak to my experience that I have now.

21 And I actually haven't been the chair for a piloted

22 examination process. So I can't really answer that

23 question.

24 **Q. So --**

25 A. I'm --

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1 **Q. So, Captain Bendixen, based -- to the best of your**

2 **knowledge, based on your experience being deeply**

3 **involved in the training process, have you ever seen**

4 **the BPC allow someone who failed the exam to be added**

5 **to the list of potential trainees?**

6 A. After the protest process has been completed and

7 reviewed, no.

8 **Q. Thank you.**

9 **When the BPC reviews the qualifications of a**

10 **trainee in the training program, does the BPC offer**

11 **state licenses to individuals who fail to pass the**

12 **observation, training, and evaluation phases of the**

13 **program?**

14 A. So there is potential to do that, because the State

15 training program is one of the multiple requirements

16 for licensure. So there's other requirements that is

17 outside the State's jurisdiction. But it is required

18 within the WAC.

19 **Q. So are you saying that sometimes the BPC awards a**

20 **license to somebody who failed the -- who failed to**

21 **pass the observation training and evaluation phases**

22 **of the program?**

23 A. So there's no observation failing training program.

24 I think that the training program is being

25 misrepresented a little bit. And it's pretty clearly

1 defined in the WAC what would cause for somebody to
2 be removed. So I would have to reference the WAC to
3 see -- but that's all been publicly available, and I
4 just don't have that with me right here. So I can't
5 really answer that without -- but there is avenues to
6 be able to do those things. And I also would have to
7 consult with the BPC attorney general in all those
8 matters.

9 **Q. So, Captain Bendixen, in your experience at the BPC,
10 does it offer state licenses to individuals who fail
11 to earn their federal first class pilot endorsement?**

12 A. It absolutely would if they cannot achieve their
13 federal first class pilot endorsement.

14 **Q. So it would deny a license, I don't -- I think you're
15 saying --**

16 A. That's required. In order to work, you have to have
17 your federal pilot's license.

18 **Q. Okay.**

19 A. Now, I think it could be pending. Because of COVID,
20 we had extreme challenges that our trainees have and
21 our pilots have for license renewals. And for the 25
22 charts they have to draw, they're making them go to
23 50 separate appointments at the examination center at
24 the federal building. And so that process was
25 COVID restrictions, but they have not been able to --

1 **meeting bare minimum requirements. It is frankly
2 disturbing to me that PMSA appears to believe that
3 this is where the bar is or should be set when it
4 comes to resourcing a pilotage system that is the
5 frontline of defense, protecting Puget Sound from a
6 catastrophic oil spill or other major maritime
7 casualty."**

8 **Did I read that correctly?**

9 A. That is what I wrote.

10 **Q. And the final sentence of your response on that page,
11 you said, "As a Puget Sound pilot and member of the
12 BPC, I will never be satisfied" --**

13 A. Can you hold on one second? I'm trying to follow
14 along. And I don't see on the -- that page.

15 **Q. I'm sorry. On the next page.**

16 A. Okay.

17 **Q. The very final sentence -- thank you -- of your
18 response.**

19 A. Okay. Can you start again?

20 **Q. Certainly.**

21 **You said, "As a Puget Sound pilot and member of
22 the BPC, I will never be satisfied with adequacy when
23 it comes" -- I think it should say to "my
24 professional responsibilities, the constituency of
25 PSP's membership, and the level of protection we**

1 they may have passed a training program, but they are
2 not -- have a pilot license in hand. They're voted
3 pending licensure because of the challenges at the
4 federal level still that exists today with COVID
5 ramifications.

6 **Q. And so the BPC still won't finalize an award of a
7 state license until a pilot has their federal first
8 class pilot endorsement.**

9 **That's what I'm hearing; is that right?**

10 A. Yes. That's correct. They cannot move a ship with a
11 pilot license until they meet -- that's in the WAC.

12 **Q. Okay. If you could turn to Exhibit SB-15X, page 2 --**

13 A. Excuse me. I've got a big book in front of me.
14 Can you give me a second? SB, which one was it
15 now?

16 **Q. 15, one, five, X.**

17 A. Okay. I got it now.

18 **Q. Thank you.**

19 **And if you can turn to page 2, you should see
20 there your response to PMSA data request 192.**

21 **If you could look down to the third paragraph of
22 your response, and I will quote you here.**

23 **"At a more basic level, I am compelled to respond
24 to PMSA's emphasis in this data request and several
25 others that follow on," quote, "Adequacy, i.e.**

1 **provide to our state's waters"; correct?**

2 A. That is what I wrote.

3 **Q. Great. The BPC -- the BPC has minimum criteria for
4 being able to sit for the pilotage exam, as you just
5 discussed earlier; right?**

6 A. That is correct. They have minimum sea time
7 qualification requirements. So, yes, that is
8 correct.

9 **Q. And as a BPC commissioner, you wouldn't require
10 something more than those criteria to be able to sit
11 for an exam; correct?**

12 A. I would not have a choice. That is in state law.

13 **Q. And the BPC has regulations; right? You referred
14 earlier to the WAC; correct?**

15 A. Yes.

16 **Q. That require the BPC to set a minimum passing or cut
17 score for the exam; right?**

18 A. Yeah. That's a long process, and actually the BPC
19 doesn't actually set that cut score. That's with
20 their contractor. So that is outside of the realm of
21 the BPC.

22 **Q. So are you familiar with WAC 363-116-076?**

23 A. Yes.

24 **Q. And that does establish that there needs to be a cut
25 score for -- as a minimum for passing the exam?**

1 A. Yes. And what's so great about that cut score, it's
2 a process, right? So it's a multi-process step to
3 qualification. And it's very much in the maritime
4 industry, we use error chain trapping for excellence.
5 And that is multiple levels of error chain --

6 **Q. Captain --**

7 A. -- so it gets to the top.

8 **Q. -- Bendixen, I didn't actually ask all of that. And**
9 **I do have very limited time. So I apologize for**
10 **stepping in your lines there. But I just wanted to**
11 **establish your awareness --**

12 MR. HAGLUND: Excuse me. Your Honor, I want
13 to object to Ms. DeLappe interrupting a witness in
14 the middle of an answer. If she wants to admonish
15 the witness after getting the answer, that's one
16 thing. But she should not be interrupting a witness
17 in the middle of her statement.

18 JUDGE HOWARD: I would agree, generally.
19 But I don't believe that there was necessarily a
20 question posed there. So I am not going to take
21 issue.

22 Ms. DeLappe, you may proceed.

23 MS. DeLAPPE: Thank you. And I do apologize
24 for interrupting. If we had more time, I would be
25 happy to talk about that.

1 **to pass on to the navigational phase?**

2 A. Absolutely. If it's a U.S. flag vessel, they would
3 have to have federal pilotage on their license. It
4 also depends on the weather conditions, the type of
5 vessel, the size, things like that. There's a lot
6 that goes into whether they -- a trainee is allowed
7 to take the con on any job.

8 **Q. So if a trainee meets those qualifications and the**
9 **minimum score, you wouldn't deny them access to the**
10 **next phase in the training program; right?**

11 A. If they have had -- yes, they could be denied if they
12 had a breach of the contract, the training agreement
13 that they filed. And we have done that in -- since
14 I've been chair of the -- the TEC.

15 So, yes, we would.

16 **Q. But you wouldn't be introducing any additional**
17 **criteria beyond that?**

18 A. We could potentially. It's a contract. So upon two
19 mutual parties of agreement, that has happened in the
20 past. And you could.

21 **Q. But the BPC would not be making subjective decisions**
22 **about its -- about the conning quizzes and what score**
23 **needs to be applied; right?**

24 A. No. It would have to be a breach of -- it would be a
25 training program agreement.

1 BY MS. DeLAPPE:

2 **Q. But, Captain Bendixen, I just wanted to go back to**
3 **that regulation and just -- you are aware that it**
4 **says that the Board, in consultation with its**
5 **designated contracting entity, will develop the**
6 **written examination and set the minimum passing or**
7 **cut score in conformance with everything else; right?**

8 A. I have to take your word. I don't have that WAC in
9 front of me. So if you read it properly, I would
10 agree with you.

11 **Q. If a candidate completes the examination process and**
12 **exceeds that minimum score, you wouldn't deny them**
13 **access to the BPC training waitlist; right?**

14 A. To the training waitlist, no.

15 **Q. Okay. Now, the BPC's regulations also require the**
16 **trainees to pass conning quizzes during the training**
17 **program; right?**

18 A. Yes.

19 **Q. And that's in order to then access the phase of the**
20 **training program where they begin to take over**
21 **navigational duties on the bridge of a ship?**

22 A. Yes. They have to pass those with 80 percent.

23 **Q. And if a trainee meets that minimum score, 80 or**
24 **85 percent, depending on the type of quiz, I believe,**
25 **then would you require anything additional to be able**

1 **Q. Thank you. Let's turn to Exhibit SB-19X.**
2 **Do you have that?**

3 A. Please stand by.

4 **Q. And that's an article called "Navigating a Dream Into**
5 **Reality."**

6 **Are you familiar with this article?**

7 A. Mm-hmm.

8 **Q. It has a photo of you there on page 1.**

9 A. Yes.

10 **Q. Great. And you -- you can see that this article is**
11 **posted on the Northwest Seaport Alliance website.**

12 A. Yes. Based on the link on the bottom of the exhibit.

13 **Q. And are you aware that it's also on the BPC website?**

14 A. Yes. I have seen it there.

15 **Q. And the BPC 2021 annual report also included a link**
16 **to it; right?**

17 A. I'll take your word for it.

18 **Q. Okay. Is all the information in this article**
19 **accurate to your knowledge?**

20 A. The stuff about me, I can't recall exactly how much
21 my exam fee was or the information that was provided
22 by the chair, the commission, and other items.

23 **Q. Let's turn to --**

24 A. I make sure not to post about myself either, and
25 people did.

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1 **Q. I'm sorry. I didn't hear the last part?**
 2 A. There's people giving comments about me. And I would
 3 take them to be true, but I can't form an opinion on
 4 it.
 5 **Q. Okay. Fair enough.**
 6 **On page 2, you see the photo there and the text**
 7 **underneath that photo. And I'll just read that text.**
 8 **It says, "While most spend about six months per**
 9 **year at sea, Bendixen turbo-charged her career by**
 10 **spending 10 to 11 months per year at sea for nearly a**
 11 **decade. 'I loved it,' she said."**
 12 **Do you see that?**
 13 A. Yes.
 14 **Q. Did you get paid more for spending the extra months**
 15 **at sea than -- than you would have if you had just**
 16 **spent six months at sea?**
 17 A. So the norm -- that's a challenging question, because
 18 I was doing different assignments when I was sailing
 19 at sea. Some -- I was an ice pilot. So I took ships
 20 to Antarctica, had extra experience. I necessarily
 21 wasn't always sailing as the rank -- as captain. I
 22 also was build superintendent. I was doing all
 23 different things. So in that particular instance,
 24 not always. Though most of the time, pay was not
 25 comparable because I was in different facets and

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1 avenues. So that's a really hard connection to make.
 2 **Q. Let me clarify my question, if I may.**
 3 **So if you were sailing 10 to 11 months a year,**
 4 **would it be fair to say that's four to five months**
 5 **more than most, according to that quote?**
 6 A. Yes, that's fair to say.
 7 **Q. And then you weren't doing those extra four to five**
 8 **months for, like, free service; right?**
 9 A. No. But oftentimes it was for less.
 10 **Q. And did you ever, during those decades -- nearly a**
 11 **decade, did you ever violate fatigue rules during**
 12 **that time?**
 13 A. That's a really interesting component. I started my
 14 career in kind of the height of the starting of STCW
 15 rest rule -- rest rules and fatigue rules and how
 16 that worked. And I would say that that's -- that's a
 17 very challenging question and would require a lot of
 18 time. I'm happy to go into it. But fatigue rules
 19 that came into effect were hard to understand. The
 20 24-hour clock, people thought it was meant on a
 21 calendar day. And so that changed and it was, no,
 22 it's a revolving -- any 24-hour period. And it
 23 became so complex that actually shipping -- like ABS,
 24 the American Bureau of Shipping, and all these
 25 companies developed computerized programs to track

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1 your rest rules for fatigue management.
 2 I have anchored a ship because crew were too
 3 tired. I have done what I could. And also the
 4 provisions for emergencies or for the safety of the
 5 vessel where you have no choice but to continue on;
 6 if you have cargo breaking free. You know, want to
 7 get home to your family. So you got to do what you
 8 can, even if you've worked all day.
 9 **Q. During that time, those -- that nearly a decade, were**
 10 **you, Captain Bendixen, able to perform your duties**
 11 **safely?**
 12 A. I performed my duties as safely as I possibly could
 13 with the skill level I had at that particular
 14 occasion. I actually will say that I now -- going
 15 back in the years of experience I have, I could have
 16 done a lot better job and been a lot safer. And my
 17 crew could have been a lot safer.
 18 **Q. Did you ever put your vessel's navigational safety at**
 19 **risk?**
 20 A. I, again, in the split second decisions, did the best
 21 that I could with the knowledge I had and the
 22 resources I had at that same particular moment. I
 23 acted the best that I could.
 24 Going back, I could have done things safer,
 25 maneuvered or handled the vessel differently.

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1 For example, when I was trying to maneuver the
 2 ship to the dock because we didn't have pilots in
 3 Thule, Greenland, I didn't have the skills that I
 4 have today and the resources to understand the wind
 5 calculations, how to properly dredge the anchor. I
 6 hadn't had the manned model experience. I hadn't
 7 had, you know, 312 jobs in the pilot training
 8 program, and you know, going on five years as a
 9 pilot.
 10 So, yeah, everybody -- you know, it's like a new
 11 surgeon. Are you safe for a patient on day one as --
 12 you know, is it different in day 20? Or your first
 13 day of a court case, are you better as a first lawyer
 14 or a seasoned lawyer?
 15 **Q. And --**
 16 A. So, yeah.
 17 **Q. -- Captain Bendixen, it sounds like you're saying**
 18 **that the pilotage training has really ensured that**
 19 **you have the highest qualifications now; is that**
 20 **correct?**
 21 A. Right now, as of today, tomorrow I strive to be
 22 better and will be better because I learned something
 23 on every job.
 24 **Q. And you never had any incidents that -- where you put**
 25 **the vessel's navigational safety at risk during that**

1 nearly a decade where you said you loved it; is that
 2 right?
 3 A. I had instances that I got over my head and I needed
 4 help from the captain. As a junior officer, I called
 5 for help. But that's the difference now. I don't
 6 get to call anybody for help. I'm alone on the
 7 bridge as the only pilot there.
 8 **Q. Captain Bendixen, do you do callback jobs as a Puget**
 9 **Sound pilot?**
 10 A. I do.
 11 **Q. Do you ever knowingly take a callback when you are**
 12 **fatigued or potentially unsafe?**
 13 A. I never knowingly take it -- take a callback job.
 14 I'm actually not allowed to in the WAC, I believe.
 15 Although don't quote me. I don't have the WAC in
 16 front of me.
 17 However, it's a lot -- I have a
 18 two-and-a-half-year-old daughter at home. I have a
 19 lot going on. And I'm not solely at sea, dedicated
 20 to piloting. And if I didn't, when I got COVID, I
 21 would have had no way to cover my shift work. I
 22 don't have any sick leave or anything like that. And
 23 we were more stringent then --
 24 **Q. When --**
 25 A. -- in Washington. So I was out for ten days. If I

1 **Q. Thank you. And you said, "I firmly believe that the**
 2 **more our pilot group reflects the diversity of our**
 3 **Puget Sound community, the greater the level of PSP's**
 4 **accident prevention capability"; right?**
 5 A. Yes, I wrote that.
 6 **Q. And in diversity there, you are referring to career**
 7 **background, maritime work experience, sailing**
 8 **experience, and gender and racial background;**
 9 **correct?**
 10 A. Yes. And also sexual orientation and the other
 11 underserved populations in the maritime industry that
 12 haven't been primarily identified. I don't want to
 13 leave them out.
 14 **Q. And so could you please turn to Exhibit CPC-32X, and**
 15 **specifically page 3.**
 16 A. That one -- stand by.
 17 MR. HAGLUND: Which number did you give?
 18 MS. DeLAPPE: CPC-32X.
 19 This is why I provided to counsel all of the
 20 exhibits.
 21 THE WITNESS: You know what it is, though.
 22 I have a book of them. Like, when you -- for me, I'm
 23 not a lawyer. I don't read these. I don't
 24 understand them all. So if you can just give me the
 25 title, that would be helpful.

1 had no comp days, I'd be trapped.
 2 **Q. So going back to my question, it sounds like you have**
 3 **never knowingly taken a callback when you were**
 4 **fatigued or potentially unsafe?**
 5 A. To the best of my ability, yeah.
 6 **Q. And have you ever been dispatched by PSP to a job in**
 7 **a manner that required you to violate the rest rules?**
 8 A. Not to my knowledge. It's -- the rest rules are very
 9 challenging and complicated. And I rely on our
 10 dispatching system to kind of be the fallback check
 11 with that.
 12 **Q. Let's talk briefly about diversity. That was another**
 13 **topic in your testimony; correct?**
 14 A. Yes.
 15 **Q. And in your testimony, at page 4 of your testimony,**
 16 **that's Exhibit SB-01T, page 4. And I'm just going to**
 17 **read to you a quote.**
 18 A. Wait, wait, wait. Page 4. I think I found that one.
 19 **Q. Line 11.**
 20 A. Wait. I don't have these all at my fingertips.
 21 Okay. Now which line?
 22 **Q. Line 11 on page 4, you say, "I firmly" --**
 23 A. Can you pause for a second? I just want to read what
 24 the question is to get the context.
 25 Okay. I'm ready.

1 BY MS. DeLAPPE:
 2 **Q. Certainly. These are data requests that PMSA sent**
 3 **for Mr. Costanzo.**
 4 **And there is -- I could share this exhibit if**
 5 **that would be helpful.**
 6 MS. DeLAPPE: Judge Howard --
 7 THE WITNESS: Can you share it?
 8 MR. HAGLUND: Ms. DeLappe, would you have
 9 any objection to our -- our screen tech person
 10 putting it on the screen?
 11 MS. DeLAPPE: No, I would not for this one.
 12 Thank you. I appreciate it.
 13 BY MS. DeLAPPE:
 14 **Q. So I'm trying to go to page 3. Thank you.**
 15 **So, Captain Bendixen, do you see here that**
 16 **Mr. Costanzo provided some diversity data regarding**
 17 **the Puget Sound Pilots in this table?**
 18 A. That's correct.
 19 **Q. Looking at this chart, would you agree that PSP has**
 20 **almost no diversity for gender, race, and ethnicity?**
 21 A. I would agree. I'm the only female, two percent,
 22 which matches -- of unlimited masters in the United
 23 States. Women. So I would agree in the gender
 24 diversity. But I do say we match.
 25 **Q. And would you say that there is good diversity of**

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1 **professional backgrounds represented here?**
 2 A. You know, I'd like to see more diversity in that.
 3 But there is some diversity there.
 4 **Q. There is no data like this in this case about the**
 5 **diversity and demographics of other pilot groups, is**
 6 **there?**
 7 A. I haven't read the whole -- I -- I can't answer that.
 8 If you say so, then I'm going to have to take your
 9 word for it. Otherwise I can't comment.
 10 **Q. Okay. It just sounds like you're not aware of any.**
 11 A. Again, I haven't read that whole thing. It's a lot.
 12 **Q. In your testimony, however, you referred to**
 13 **David Lough's comparison of PSP compensation with**
 14 **other pilot groups; right?**
 15 A. Yes. I do believe that I referred to David Lough.
 16 **Q. And you believe that higher levels of compensation**
 17 **would attract more diverse pilot candidates to PSP?**
 18 A. I do.
 19 **Q. And you believe this would improve safety?**
 20 A. I do. Wholeheartedly.
 21 **Q. But you do not have diversity data like this for**
 22 **other pilot groups that Mr. Lough studied?**
 23 A. Do you? I don't know.
 24 **Q. I'm the one who gets to ask the questions,**
 25 **Captain Bendixen.**

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1 **You don't have diversity data for the other pilot**
 2 **groups Mr. Lough studied, do you?**
 3 A. Me personally, no.
 4 MS. DeLAPPE: Thank you. I have no further
 5 questions.
 6 JUDGE HOWARD: All right. Do we have any
 7 redirect?
 8 MR. HAGLUND: Yes. Just a few minutes, Your
 9 Honor.
 10 REDIRECT EXAMINATION
 11 BY MR. HAGLUND:
 12 **Q. There's a PMSA witness who -- let me just ask this.**
 13 **I think it's a cross-examination. I don't think it's**
 14 **in the record.**
 15 **But to the extent there's a PMSA witness who will**
 16 **say that a more diverse group of pilots would -- or a**
 17 **more diverse workforce outperforms a nondiverse**
 18 **workforce in terms of productivity, would you agree**
 19 **with that statement?**
 20 A. I believe I would.
 21 **Q. And likewise, is it your belief that a more diverse**
 22 **PSP pilot core will improve the accident prevention**
 23 **capability of PSP?**
 24 A. Absolutely.
 25 MR. HAGLUND: No further questions.

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1 JUDGE HOWARD: All right. Thank you. Do we
 2 have any questions from the bench for
 3 Captain Bendixen?
 4 CHAIR DANNER: None from me, Your Honor.
 5 COMMISSIONER DOUMIT: No, Your Honor.
 6 COMMISSIONER RENDAHL: None for me. Thank
 7 you.
 8 JUDGE HOWARD: All right. I would like to
 9 thank you for your testimony, Captain Bendixen. You
 10 are excused from the remainder of the hearing.
 11 THE WITNESS: Thank you.
 12 JUDGE HOWARD: So we're almost at noon here.
 13 I'm going to suggest that we take a -- we rejoin here
 14 at 12:40 p.m. And I'm going to suggest that we pick
 15 up with Costanzo when we rejoin, and then we move on
 16 to the vessel tonnage issues.
 17 Is that agreeable to the parties?
 18 MR. HAGLUND: Yes, Your Honor. I wanted to
 19 point out one thing. I forgot to mention earlier
 20 that Sean McCarthy had a scheduling conflict that
 21 prevents him from being here today. So we -- he'll
 22 be here tomorrow morning. So you would just -- after
 23 Mr. Costanzo, it would move to Captain Stoller and
 24 Captain Carlson, et cetera.
 25 JUDGE HOWARD: All right. We will call him

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1 tomorrow and we can adjust. It should be no problem.
 2 MR. HAGLUND: Thank you.
 3 MR. BLOCK: Judge, if I can ask the
 4 question, at 1:00, we'll start with -- recommence
 5 with Captain Klapperich. Immediately following that
 6 will be TOTE's witness, Phil Morrell; is that right?
 7 JUDGE HOWARD: Yes. And then Captain Lough.
 8 MR. BLOCK: Yeah.
 9 JUDGE HOWARD: I do expect that those
 10 witnesses' crosses are going to occur slightly after
 11 1 p.m., because we're going to try to fit in Costanzo
 12 right after we come back from lunch. So it's
 13 probably going to be more like 1:10 or 1:15.
 14 MR. BLOCK: Okay. Thank you.
 15 JUDGE HOWARD: All right. I'll see you all
 16 back here at 12:40. We are off the record.
 17 (A break was taken from
 18 11:56 a.m. to 12:41 p.m.)
 19 JUDGE HOWARD: Let's be back on the record.
 20 It's 12:41 p.m. We're returning after lunch.
 21 Our next witness is PSP's witness,
 22 Charles Costanzo. I see you have your video feed
 23 turned on.
 24 Could you please raise your right hand and I'll
 25 swear you in.

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1 *****

2 Charles Costanzo, having been first duly sworn, was

3 examined and testified as

4 follows:

5 JUDGE HOWARD: I'm sorry. Your audio was

6 not coming through for a moment.

7 I'm still not hearing your audio. I believe

8 before -- yes. We'll wait for some technical

9 assistance.

10 MR. HAGLUND: It should work now.

11 THE WITNESS: I do.

12 JUDGE HOWARD: You do. All right.

13 THE WITNESS: I sure do.

14 JUDGE HOWARD: All right. Thank you.

15 All right. Mr. Haglund, could you please

16 introduce the witness?

17 MR. HAGLUND: Yes.

18 Mr. Costanzo, what's your position with PSP?

19 THE WITNESS: I'm the executive director of

20 Puget Sound Pilots.

21 MR. HAGLUND: Did you prepare original and

22 rebuttal testimony in this case?

23 THE WITNESS: I did.

24 MR. HAGLUND: Is it true and accurate to the

25 best of your knowledge?

 THE WITNESS: It is.

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1 MR. HAGLUND: I tender the witness for

2 cross-examination.

3 JUDGE HOWARD: All right. Thank you. And

4 PMSA may proceed with their cross.

5 MS. DeLAPPE: Thank you.

6 CROSS-EXAMINATION

7 BY MS. DeLAPPE:

8 **Q. And good afternoon, Mr. Costanzo.**

9 A. Good afternoon, Ms. DeLappe.

10 **Q. Your testimony includes discussion of vessel safety,**

11 **including criticism of foreign flag vessel**

12 **operations. So I'm going to ask you a few questions**

13 **related to that.**

14 **If you could please turn to Exhibit CPC-37X, and**

15 **also if you could have handy Exhibit CPC-38X.**

16 **And those are letters?**

17 A. Go ahead.

18 **Q. Thank you. So those are letters that you wrote.**

19 **CPC-37X is your letter to the Northwest Seaport**

20 **Alliance on January 5th, 2021; right?**

21 A. This is in my capacity in my previous job at the

22 American Waterways Operators.

23 **Q. And looking here at page 2 --**

24 A. Okay.

25 **Q. Do you agree with all the claims that you made here**

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1 **on page 2?**

2 A. We're talking about the February 22, 2021, letter?

3 **Q. No. CPC-37X should be your public comment --**

4 A. Northwest Port Clean Air Strategy.

5 **Q. -- to the port commission regarding north -- yes.**

6 **Northwest Port's Clean Air Strategy.**

7 **So on page 2 of --**

8 A. Yeah. I -- I agree with that. I stand by these

9 comments, sure.

10 **Q. Thank you.**

11 **If you could turn to --**

12 COMMISSIONER RENDAHL: Ms. DeLappe, I just

13 wanted to clarify, is that 37X or 36X?

14 MS. DeLAPPE: 37X. Thank you.

15 COMMISSIONER RENDAHL: Okay. Thank you.

16 BY MS. DeLAPPE:

17 **Q. And then 38X is a letter dated February 22, 2021,**

18 **with the letterhead the American Waterways Operators;**

19 **correct?**

20 A. Yeah. Yep. That's a --

21 **Q. And that's a letter that you wrote to the -- I'm**

22 **getting a little feedback. Is there -- I'll**

23 **continue.**

24 **That's your letter to the California Department**

25 **of Fish & Wildlife?**

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1 A. In my capacity as the American Waterways Operators GC

2 and VP, yes.

3 **Q. So if you look at that letter, pages 1 and 2, do you**

4 **stand by each of the claims that you made in that --**

5 **this letter also? And I can take some examples if**

6 **that would be helpful.**

7 A. I do. I do agree with them, yes.

8 **Q. So just to confirm, for example, you say that**

9 **"Non-tank vessels do not represent an increase in the**

10 **risk of an oil spill, so it is inappropriate to**

11 **increase the burden of fees on non-tank vessels for**

12 **oil spill risks."**

13 **You stand by that?**

14 A. Yeah. And I want to clarify that too; that the fee

15 we're talking about here is specifically regarding --

16 well, let's just say that the -- the fee that we're

17 talking about in the increase, it's not nonzero.

18 That because the spills volumes weren't increasing in

19 California, because the types of vessels transiting

20 in California weren't changing, that it reflected

21 a -- a baseline level rather than an increase.

22 **Q. And so on the next page you have a list of**

23 **significant improvements that have occurred that,**

24 **quote, "Drive the risks of marine oil spills down."**

25 **You stand by that also?**

1 A. Yeah. Absolutely. Absolutely. I stand by the fact
 2 that -- that oil spill risk is driven down by a
 3 variety of elements of the safety -- safety -- marine
 4 safety regime.
 5 **Q. And then in the second paragraph there on that same**
 6 **page, you agree with your claim that maritime spill**
 7 **prevention and response is extensively regulated by**
 8 **the U.S. Coast Guard?**
 9 A. Among other agencies, yes. OSPR being another one of
 10 them, in California.
 11 **Q. If you could please turn now to CPC-33X.**
 12 A. Okay. Let's talk about what that is.
 13 What's that?
 14 **Q. So these are PMSA data requests.**
 15 A. Okay.
 16 **Q. And if you could go ahead and go to the end, pages 36**
 17 **and 37, you'll see they are PMSA Data Request**
 18 **No. 741?**
 19 A. Okay. Yeah. These are to me.
 20 **Q. And do you recognize that the list of issue --**
 21 **admissions that were requested of you, A through U,**
 22 **are all taken from those two public comment letters**
 23 **that we just looked at?**
 24 A. Yeah. I'd say that --
 25 CHAIR DANNER: Excuse me. I'm sorry.

1 **response?**
 2 A. Yeah. It's an objection.
 3 **Q. And do you believe that your opinions on maritime**
 4 **safety are a waste of time?**
 5 A. That my opinions on maritime safety are a waste of
 6 time? No, I don't believe that.
 7 **Q. Let's turn to --**
 8 A. This isn't my opinion. This isn't asking for my
 9 opinion on maritime safety. It's just asking for
 10 whether the Coast Guard regulates maritime spill
 11 prevention in response and to an extensive degree.
 12 And the answer is, yes, they do.
 13 **Q. Let's turn to your -- your CV, Exhibit CPC-02.**
 14 A. Okey-doke.
 15 **Q. So, Mr. Costanzo, you have never represented or**
 16 **advocated for foreign -- the sector that would**
 17 **comprise foreign flag vessels in the maritime**
 18 **industry?**
 19 A. No. I have just been exclusively engaged in and
 20 representing U.S. flag vessels in the -- in the
 21 tugboat and barge industry and in my capacity as the
 22 American National Waterways Operators, if that's what
 23 you're referring to.
 24 **Q. And so your CV also didn't have any work experience**
 25 **with foreign flag vessel insurance claims,**

1 What -- Ms. DeLappe, what are the page numbers that
 2 we're looking at here?
 3 MS. DeLAPPE: Pages 36 and 37, please.
 4 CHAIR DANNER: Thank you so much.
 5 MS. DeLAPPE: Thank you.
 6 BY MS. DeLAPPE:
 7 **Q. So those look familiar. They're from your letters;**
 8 **right?**
 9 A. I'd like to -- I'd like to compare them one to one.
 10 I mean, there are a lot of them here. They run A
 11 through -- A through T. So -- but I wouldn't be able
 12 to say that they're directly taken from that. Don't
 13 know. I would have to look at them.
 14 **Q. All right. Can you look at L as an example? Do you**
 15 **see that it says "Admit that the U.S. Coast Guard**
 16 **already extensively regulate" -- and it should have**
 17 **an S there.**
 18 A. Yeah. American Spill Prevention and Response.
 19 Absolutely. Yeah.
 20 **Q. Yeah. Right. So you can see that that one at least**
 21 **is familiar to you from the letter that we just**
 22 **looked at; correct?**
 23 A. It's familiar to me as a concept it's true, but as
 24 far as letter to letter, I don't know.
 25 **Q. Anyway, could you look on the next page at your**

1 **underwriting, vessel ownership issues, or protection**
 2 **indemnity club issues. Is that because --**
 3 A. Well, not exactly.
 4 **Q. -- you have work experience --**
 5 A. You see, in that portion from 2007 to 2008, as an
 6 associate attorney at Twomey, Hoppe & Gallanty, we
 7 did, in fact, involve -- engage in some cases that
 8 dealt with insurance and claims in a maritime space
 9 involving foreign flag carriers.
 10 **Q. So what was your role in that?**
 11 A. It was an associate attorney. It was a first job out
 12 of law school. It was document review, things like
 13 that.
 14 **Q. So you got your -- that was your very first associate**
 15 **job as an attorney that you got --**
 16 A. Correct.
 17 **Q. -- some exposure to that issue?**
 18 A. Correct.
 19 **Q. Can I just ask a question of curiosity. How did you**
 20 **have law offices of attorney Charles P. Costanzo**
 21 **while you didn't have a -- your law degree finished**
 22 **or your license as an attorney?**
 23 A. That -- that's a -- that's my father.
 24 **Q. Oh.**
 25 A. Actually, I worked with my dad from 2003 to 2006.

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1 **Q. Thank you.**
 2 A. I was an attorney while he was -- I was a paralegal
 3 while he was winding up his practice.
 4 **Q. Thank you. That satisfies that curiosity.**
 5 A. There you go.
 6 **Q. Can you look now at CPC-22T. That's your rebuttal**
 7 **testimony, please.**
 8 A. 22T. You bet.
 9 **Q. And specifically I'd like to go to page 22 there.**
 10 **I'm calling it 22T. I think there was a numbering**
 11 **issue. But it's your rebuttal testimony.**
 12 A. Okay.
 13 MR. HAGLUND: What page did you ask?
 14 BY MS. DeLAPPE:
 15 **Q. Let me know when you're there, please.**
 16 A. 22T. What was the page again?
 17 **Q. Page 22.**
 18 **And if you look about halfway down the page, do**
 19 **you see there that you said -- you had an opinion**
 20 **that there's a liability, quote, "loophole" for P&I**
 21 **club members such that if, quote, "An at-fault ship**
 22 **owner abandons its vessel following a major casualty**
 23 **or oil spill on the Puget Sound, Washington's**
 24 **financial responsibility requirement would be**
 25 **essentially meaningless."**

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1 **Is that --**
 2 A. Yeah. This -- this provision in -- in the law would
 3 allow a vessel owner or operator who is a member of
 4 an international P&I mutual organization to
 5 essentially decline -- abandon a vessel and not
 6 seek -- not pay out anything and essentially not be
 7 entitled to indemnity thereafter.
 8 **Q. And so if we turn --**
 9 A. That's how I understand this law to work.
 10 **Q. And so if we turn two pages later, you have a**
 11 **hypothetical there where a ship owner can, quote,**
 12 **"Walk away from its liabilities," end quote, and a,**
 13 **quote, "P&I club will almost certainly deny**
 14 **coverage."**
 15 **Is that -- that's your opinion?**
 16 A. Well, if the insurer hasn't paid anything out and
 17 it's an indemnity -- if the insured hasn't paid
 18 anything out and it's an indemnity policy, then the
 19 P&I club isn't going to reimburse the insured if they
 20 haven't paid anything out on an indemnity claim.
 21 **Q. So let's look at -- we can look -- are you familiar**
 22 **with RCW Chapter 90.56?**
 23 A. I think so. Is that the oil spill -- the oil spill
 24 and substance -- hazardous substance act?
 25 **Q. Yes. And you've cited that in your original**

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1 **testimony regarding the best availability -- the best**
 2 **available protection standard, if you'll recall.**
 3 A. I think it's best achievable protection. But, yeah.
 4 **Q. So you didn't cite that statute, that chapter, at all**
 5 **in your discussion about liabilities in the Puget**
 6 **Sound, did you?**
 7 A. I don't know. If you say I didn't, then perhaps I
 8 didn't. But I know that I did discuss that
 9 extensive -- that bill extensively.
 10 **Q. Let's look at Exhibit CPC-39X.**
 11 A. 39X. Now, what is that?
 12 **Q. So you'll see there that that is Chapter 90.56, RCW.**
 13 A. Okay.
 14 **Q. And I would ask you to go to page 25 of that exhibit.**
 15 A. Okay. Yep. Here we go. We're getting -- they're
 16 getting me to the page here.
 17 **Q. So -- and I would direct your attention specifically**
 18 **to RCW 90.56.370 on that page.**
 19 A. Yeah.
 20 **Q. Let me know when you're there.**
 21 A. "Shall be strictly liable, without regard to the
 22 fault, for the damages, persons, property, public or
 23 private caused by such entry."
 24 **Q. Thank you.**
 25 **And so this statute imposes strict liability for**

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1 **a vessel that spills oil into the Puget Sound for any**
 2 **reason whatsoever; right?**
 3 A. Yeah. Yeah. I mean, "strictly liable."
 4 **Q. And there's no liability and limitation based on the**
 5 **size of the certificate of financial responsibility,**
 6 **is there?**
 7 A. Well, that's not -- well, I mean, there's nothing in
 8 here. But that's not saying that the damages -- that
 9 the amounts that are recoverable, that the vessel
 10 itself or the owner of the vessel can't somehow limit
 11 its -- its liability. There are all kinds of means
 12 to limit their liability. I mean, just because
 13 there's no limitation here doesn't mean that it's --
 14 that it's therefore unlimited.
 15 **Q. Is there -- does that -- would you agree that under**
 16 **this statute, the liability continues to exist even**
 17 **if a vessel owner physically abandons the statute --**
 18 **I mean the vessel?**
 19 A. To the extent that you can find the responsible party
 20 and -- and successfully satisfy a judgment against
 21 that party, I suppose. But that's the challenge.
 22 The challenge is not necessarily the fixing of
 23 liability, but the actual collecting of a judgment
 24 and the ability to find the responsible party and get
 25 them to pay. That's been made more difficult --

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1 **Q. And, Mr. --**
 2 A. -- by this process.
 3 **Q. And, Mr. Costanzo, I'm specifically asking you about**
 4 **legal liability because you have opined in your**
 5 **testimony that there is a legal loophole; right? And**
 6 **I am just directing you to the fact that this statute**
 7 **does not have any limitations, legally; is that**
 8 **correct?**
 9 A. Well, if you are a member of the P&I club, then you
 10 aren't covered by that COFR expansion bill; right?
 11 You're exempted from that; right?
 12 **Q. So, Mr. Costanzo, where in this strict liability**
 13 **statute that you have in front of you right now does**
 14 **it have any limitation on the liability if you're a**
 15 **member of a P&I club?**
 16 **Can you point me to the -- to the section of the**
 17 **statute? I'm -- I'm not seeing it.**
 18 A. Well, is there anything that talks about any
 19 limitation at all?
 20 **Q. You're asking me?**
 21 A. Well, are there any -- well, I don't see any language
 22 affecting limitation of -- at all.
 23 **Q. Great.**
 24 A. It just -- it --
 25 **Q. Thank you.**

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1 A. -- just says liability.
 2 **Q. And there's no limitation on the strict liability**
 3 **statute that you can see?**
 4 A. Right. The limitation exists elsewhere in statute
 5 and the code is read together as a whole.
 6 **Q. So you're saying that other statutes would trump this**
 7 **strict liability statute?**
 8 A. I don't know about the word "trump," but certainly
 9 inform.
 10 **Q. You don't have any legal authority to cite for your**
 11 **position on that, do you?**
 12 A. Well, the -- the Washington statute on certificate of
 13 financial responsibility.
 14 **Q. Right. But that statute does not say the strict**
 15 **liability statute does not apply to those who are**
 16 **covered by P&I club membership; right?**
 17 A. It doesn't say anything about the -- the degree to
 18 which they can cabin their liability, no.
 19 **Q. It doesn't say anything about this statute not**
 20 **applying to members of P&I club, does it?**
 21 A. Specifically, no. But it's elsewhere.
 22 **Q. Let's turn to --**
 23 A. The limitations are contained elsewhere.
 24 **Q. Let's turn now to CPC-33X, please.**
 25 A. Sure.

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1 **Q. And specifically page -- pages 25 and 26.**
 2 A. Okay.
 3 **Q. And these are PMSA data requests. It's a DR726,**
 4 **specifically the one I'm looking at.**
 5 A. Mm-hmm.
 6 **Q. And it asks you to clarify how your testimony about**
 7 **financial responsibility requirements related to**
 8 **actual vessel liabilities from an oil spill under the**
 9 **statute we were just looking at; right?**
 10 A. Mm-hmm.
 11 **Q. And you see that there is, again, that same objection**
 12 **that says that this is a waste of time.**
 13 A. Yeah.
 14 **Q. Now, given the fact that you have not presented any**
 15 **information about this statute in your testimony**
 16 **regarding oil spill liability, do you think that it**
 17 **might not be a waste of your time to consider your**
 18 **opinion on that matter for this case?**
 19 A. Could you repeat the question?
 20 **Q. Given our time, I would like to move on to the Port**
 21 **State Control issue that you also testified about.**
 22 A. Okay.
 23 **Q. In your testimony you -- you talked about the**
 24 **administration of Port State Control functions by the**
 25 **U.S. Coast Guard; correct?**

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1 A. Correct.
 2 **Q. You have never, yourself, conducted a Port State**
 3 **Control exam, have you?**
 4 A. No.
 5 **Q. You've never supervised one; right?**
 6 A. No. But I don't think that is -- that is a necessary
 7 qualification to determine what a port --
 8 **Q. My question is not about what your opinion is. It's**
 9 **about your experience. And I think I got the answer.**
 10 **No.**
 11 **You have never worked as a crew --**
 12 **JUDGE HOWARD: It sounds like someone is not**
 13 **muted who should be muted. So maybe check -- check**
 14 **your -- or what have you.**
 15 **MS. DeLAPPE: Thank you.**
 16 **BY MS. DeLAPPE:**
 17 **Q. You have never worked as crew on a vessel subject to**
 18 **a Port State Control exam, Mr. Costanzo; right?**
 19 A. No.
 20 **Q. So you have no direct experience with the**
 21 **administration of -- of that type of an exam?**
 22 A. Well, I have certainly had direct experience with
 23 vessels that are -- that potentially could undergo an
 24 exam.
 25 **Q. That does not mean that you've had experience of the**

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1 administration of the exam firsthand, have you?
 2 A. As, like, a member of the Coast Guard conducting the
 3 exam?
 4 **Q. Or even being present during one.**
 5 A. Does being telephonically present count?
 6 **Q. No.**
 7 A. Then no.
 8 **Q. So in your rebuttal testimony at CPC-22T, which we**
 9 **were looking at earlier, on page 17, you say there --**
 10 **let's see. You say that the bottom line, I'm quoting**
 11 **you here, as line 6, the bottom line -- do I have the**
 12 **right page here? Okay.**
 13 **"The bottom line is that Port State Control,**
 14 **while important, reviews the documentation of a ship**
 15 **at dock"; right?**
 16 A. Generally that's true.
 17 **Q. And then on page 15 of your rebuttal testimony, line**
 18 **23, you said, "The inspections themselves generally**
 19 **take about three to five hours to complete, and the**
 20 **inspections seek to balance the Coast Guard marine**
 21 **safety mission against its commerce mission"; is that**
 22 **right?**
 23 A. Yeah. Among other missions that the Coast Guard has.
 24 Yeah.
 25 **Q. So if you could turn to Exhibit CPC-25. And those --**

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1 that's your exhibit that you submitted with your
 2 rebuttal. That's a checklist.
 3 A. Mm-hmm.
 4 **Q. Do you have that in front of you?**
 5 A. Not right at the moment. But it's being conjured for
 6 me as we speak.
 7 **Q. Thank you to the conjurers.**
 8 **When you get there, I'd ask that you turn to**
 9 **page 14 of the exhibit.**
 10 A. Okay.
 11 **Q. And you are familiar with this checklist that you**
 12 **submitted with your testimony as being the checklist**
 13 **that is used generally for Port State Control**
 14 **examinations?**
 15 A. Okay. Yeah.
 16 **Q. Okay. So if you turn to page 14 and start at No. 48**
 17 **where it says exam -- "Examine echo-sounding device."**
 18 **Are you with me?**
 19 A. "Verify presence of echo sounding device or other
 20 electronic means."
 21 **Q. And can you just tell me, is that a review of**
 22 **documentation? Or is it a physical examination?**
 23 A. It's a physical examination. It's a looking to see
 24 if a -- a piece of equipment is there.
 25 **Q. Thank you.**

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1 **So if you just scroll through the next several**
 2 **pages, let me know when you reach one that is**
 3 **document review. And I will posit to you, to help**
 4 **speed things along, that the only one you'll find is**
 5 **No. 84, "Examine fire control plan." But everything**
 6 **else -- I -- I'm not seeing any documentation review.**
 7 **Are you? And you are familiar with this**
 8 **checklist you submitted; right?**
 9 A. Well, when you go -- when you go through and say
 10 you're looking at a fire extinguisher, for example,
 11 to verify an operable fire extinguisher, you're
 12 looking at the fire extinguisher; right? But you're
 13 also looking at a tag. You're not actually shooting
 14 the fire extinguisher. You're looking at a tag on it
 15 to see whether it's timely -- so that's actually a
 16 document review, rather than an equipment review. So
 17 that's like the distinction that I think I'm trying
 18 to get to there.
 19 **Q. So, Mr. Costanzo, you see that, in this list, I've**
 20 **directed you to start at No. 48 and to scroll through**
 21 **to No. 116. And you're telling me that all of these**
 22 **have the Coast Guard checking tags, for example,**
 23 **when --**
 24 A. No. The one I just told you was the fire
 25 extinguisher.

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1 MR. HAGLUND: Objection. Objection. Asking
 2 a question that requires the witness to scroll
 3 through multiple pages and not give the witness time
 4 to do it if you wish him to actually be able to
 5 answer the question is improper.
 6 MS. DeLAPPE: Mr. Costanzo already told me
 7 that he is familiar with this exhibit that he himself
 8 submitted with his testimony.
 9 JUDGE HOWARD: I'll allow the question.
 10 BY MS. DeLAPPE:
 11 **Q. Mr. Costanzo, I'll just take as another example, if**
 12 **you could look at "Examine switch boards," No. 105,**
 13 **under "Electrical Systems."**
 14 **Would you agree with me that that is another**
 15 **physical exam?**
 16 A. Well, I don't exactly know what goes into
 17 verification of the circuit directory. But I think
 18 that's a document.
 19 **Q. Okay. You don't know, though?**
 20 A. I'm just sure that they're not actually going into
 21 the electronic system and, like, running, you know,
 22 charges from one point of the board to the other.
 23 **Q. So when it says "Examine condition of equipment for**
 24 **electrical hazards," that's a physical examination;**
 25 **correct?**

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1 A. Probably a cursory one. But, yeah.
 2 **Q. Mr. Costanzo, of all of these items that we've talked**
 3 **about, none of them are balanced against a commercial**
 4 **interest, are they, on this checklist?**
 5 A. Generally speaking, the Coast Guard has to balance
 6 its -- its total of its missions, whether it's on
 7 this checklist or not.
 8 **Q. My question is: Are any of the items on this**
 9 **checklist about commercial interest?**
 10 A. The whole premise of this checklist --
 11 **Q. That's not my question, though.**
 12 **I'm pointing -- I want you to tell me which item**
 13 **on the checklist you -- where you're seeing a**
 14 **commercial interest.**
 15 A. The entire safety integrity of the ship actually
 16 informs its commercial efficacy as a conveyance of
 17 goods and cargo.
 18 **Q. Mr. Costanzo, do pilots perform the physical**
 19 **examination tasks on this checklist?**
 20 A. No.
 21 **Q. Would it be fair to say that pilotage is not a**
 22 **substitute for the Port State Control examination by**
 23 **the U.S. Coast Guard?**
 24 A. That's fair to say.
 25 **Q. I'd like to now turn -- I see I'm -- I've run out of**

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1 **time.**
 2 **No more questions. Thank you.**
 3 A. Okey-doke.
 4 JUDGE HOWARD: All right. Thank you. Any
 5 redirect?
 6 MR. HAGLUND: Yes, Your Honor.
 7 REDIRECT EXAMINATION
 8 BY MR. HAGLUND:
 9 **Q. Mr. Costanzo, if we could bring up CPC-38X. This is**
 10 **your February 2021 letter on behalf of American**
 11 **Waterways Operators, where you were vice president**
 12 **and general counsel for the Pacific region.**
 13 **Does this letter, which, at page 2, notes that**
 14 **significant improvements in vessel equipment,**
 15 **inspection, regulations, standards of care, crew**
 16 **training, and safety management advancements have**
 17 **continued to drive risk down, does this letter speak**
 18 **in any way to foreign flag vessels calling anywhere**
 19 **in the United States?**
 20 A. No, absolutely not. Speaking on behalf of the
 21 tugboat and barge industry in the U.S.
 22 **Q. In your experience, is there a significant difference**
 23 **between the level of crewing, navigational equipment,**
 24 **safety standards, between the U.S. flag vessels,**
 25 **tugboats, as well as the small oceangoing fleet that**

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1 **is U.S. flag and that of the foreign flag, flag of**
 2 **convenience fleet?**
 3 A. Yeah. The U.S. -- the U.S. flag in terms -- at the
 4 time, this was within several years of subchapter M,
 5 which was a regulation that required tugboats and
 6 barges to be inspected class of vessels, necessitated
 7 redundant propulsion, redundant steering, double
 8 hulls so -- and the crewing -- the crewing rules are
 9 different. And so, yeah, we were talking about a
 10 different segment of the industry with different --
 11 with different standards.
 12 **Q. Now, with respect to the questions that you got**
 13 **regarding a couple of data requests that requested**
 14 **admissions A through late in the alphabet, how many**
 15 **data requests did PSP receive from PMSA during the**
 16 **course of this case?**
 17 A. 750, I believe.
 18 **Q. And in connection with the one that Ms. DeLappe said**
 19 **was related to this letter you authored on behalf of**
 20 **AWO in February of 2021, was there any reference to**
 21 **that letter anywhere in that DR No. 741 such that you**
 22 **could have known it was referencing statements made**
 23 **in your letter?**
 24 A. No.
 25 **Q. Okay. Now, you were asked quite a few questions**

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1 **about the strict liability provision under the**
 2 **Washington code regarding oil spills in any**
 3 **Washington waters. And you acknowledge that it was a**
 4 **strict liability statute.**
 5 **But I want to pose a hypothetical to you.**
 6 **If a foreign flag ship were to have an oil spill,**
 7 **abandon the ship, and not pay any money to the State**
 8 **to clean it up, and it is housed in a single shell**
 9 **corporation and the owner of that ship is a member of**
 10 **a P&I club that is an exempt -- is a member of a P&I**
 11 **club that is used, with the Department of Ecology, to**
 12 **be exempted from the certificate of financial**
 13 **responsibility, are the victims of the oil spill**
 14 **going to recover anything from that ship owner in**
 15 **that hypothetical?**
 16 A. No.
 17 **Q. If, on the other hand, a certificate of financial**
 18 **responsibility from a surety insurance company had**
 19 **been issued to the tune of the \$1 billion required**
 20 **for certain size vessels under that statute, would**
 21 **the victims make a recovery up to the amount of that**
 22 **policy from that insurance company?**
 23 A. It would indeed.
 24 **Q. And so the loophole -- could you explain to the**
 25 **Commissioners the nature of this loophole that**

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1 **distinguishes liability policies that everybody knows**
 2 **a lot about because they've got homeowners and car**
 3 **insurance, and an indemnity policy which is unique to**
 4 **the P&I club environment?**
 5 A. Yeah. The threat -- the -- indemnity coupled with
 6 the abandonment allows the owner to essentially step
 7 away before the P&I club responsibility or the P&I
 8 indemnification kicks in.
 9 And so it's -- it's allowing that abandonment --
 10 it's allowing the circumstances for that abandonment
 11 to -- to occur.
 12 **Q. And that was explained on one of the pages that**
 13 **Ms. DeLappe referenced where you cite a case for the**
 14 **fact that that's a -- the payment by the ship owner**
 15 **is a precondition to the P&I club having to pay?**
 16 A. Yeah. That was the Weeks [phonetic]case, I believe.
 17 **Q. So if they abandon the vessel, as has happened around**
 18 **the world, the P&I club has no obligation to step in**
 19 **and will not?**
 20 A. Right. And the controlling jurisdiction has no
 21 recourse.
 22 **Q. And do you also reference in your testimony, that**
 23 **U.S. courts, including one in Oregon just in the last**
 24 **couple of years, have refused to pierce the corporate**
 25 **veil of a single shell corporation in a situation**

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1 **where two Greek brothers had 10 or 15 ships all in a**
 2 **single controlled --**
 3 A. Looked like common control, but was nonetheless
 4 unpierceable because it was in a single ship shell.
 5 **Q. And that related to a vessel abandoned in Brazil?**
 6 A. Correct.
 7 **Q. Crew not paid, damages not paid?**
 8 A. Owner walked away.
 9 **Q. And you were asked some questions about the port**
 10 **controlled checklist.**
 11 **To your knowledge, is much of that examination by**
 12 **the Coast Guard simply looking at engineering logs**
 13 **related to the items of equipment on that checklist?**
 14 A. I believe so, yes.
 15 MR. HAGLUND: No further questions.
 16 THE WITNESS: Thank you.
 17 JUDGE HOWARD: All right. Staff indicated
 18 cross for this witness as well.
 19 Mr. Callaghan.
 20 MR. CALLAGHAN: Thank you, Your Honor.
 21 CROSS-EXAMINATION
 22 BY MR. CALLAGHAN:
 23 **Q. Good afternoon, Mr. Costanzo.**
 24 **Do you have a copy of your rebuttal testimony**
 25 **with you?**

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1 A. I'm looking at it.
 2 **Q. All right. In your rebuttal testimony, you provide**
 3 **your opinion on the proper legal standard in this**
 4 **case; correct?**
 5 A. I do.
 6 **Q. And on page 2, line 19 of your testimony, you state**
 7 **"PSP's position is that the Commission should adopt**
 8 **best achievable protection as the appropriate**
 9 **standard to guide the rate-setting process in a**
 10 **pilotage case."**
 11 **Is that accurate?**
 12 A. That's actually -- yeah. That's -- that's how I
 13 feel, yes.
 14 **Q. All right. On page 2, at the top of page 2 of your**
 15 **rebuttal testimony, you have a section title that**
 16 **states, "The Commission's Order 06 recognizes a**
 17 **standard that, properly applied, is consistent with**
 18 **the best achievable protection standard."**
 19 **Is that correct?**
 20 A. That's right.
 21 **Q. Mr. Costanzo, have you read Order 06 in its entirety?**
 22 A. Yes. Yes, I have.
 23 **Q. And does your rebuttal testimony accurately**
 24 **characterize the ruling in Order 06?**
 25 A. Well, I think the important piece of Order 06 is that

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1 it provides --
 2 **Q. I'm sorry, Mr. Costanzo. I'm going to stop you.**
 3 **Does your rebuttal testimony accurately**
 4 **characterize the ruling in Order 06?**
 5 A. The rebuttal testimony speaks to my opinion as to
 6 what the standard should be. It's different from
 7 what is said in Order 06, which is that the
 8 determination of the standard of fair, reasonable,
 9 and sufficient involves an exercise of judgment in
 10 light of the specific facts of each rate case. And
 11 so I think that there is room within Order 06 to
 12 apply fairly the best achievable protection standard,
 13 as I laid out, in a way that is fair, just,
 14 reasonable, and sufficient for the provision of
 15 pilotage services.
 16 **Q. Let me ask it this way, Mr. Costanzo.**
 17 **Is every statement you make in your rebuttal**
 18 **testimony about Order 06 accurate?**
 19 A. Is every statement I make about Order 06 accurate?
 20 I would be curious to know if you think that
 21 there's anything that's inaccurate.
 22 **Q. Mr. Costanzo, you're the witness here; correct?**
 23 A. Correct.
 24 **Q. You -- you were a practicing attorney for many years?**
 25 A. Not for many years, no.

1 **Q. All right. Are you aware that you don't get to ask**
 2 **me questions?**
 3 A. I didn't ask the question.
 4 COMMISSIONER RENDAHL: Excuse me, Your
 5 Honor. I think there's somebody speaking who is not
 6 on mute.
 7 JUDGE HOWARD: Yes. I think Dan Jordan, you
 8 may need to mute your phone or your computer for now.
 9 BY MR. CALLAGHAN:
 10 **Q. Mr. Costanzo, on page 3, lines 7 through 8 of your**
 11 **rebuttal testimony, it states that you believe the**
 12 **rate-making model must be, quote, "Informed" --**
 13 **sorry. The rate-making model must be informed by**
 14 **Order 06 in this case; is that right?**
 15 A. Yes, I do.
 16 **Q. And does Order 06 state anything about the question**
 17 **of what impact the best achievable protection**
 18 **standard has on this case?**
 19 A. No, it does not, I don't believe.
 20 **Q. All right. So could you explain that statement in --**
 21 **on page 3 of your rebuttal testimony, that the**
 22 **rate-making model must be informed by Order 06?**
 23 A. Yes. Order 06 very clearly talks about the
 24 involvement of exercise of judgment in light of the
 25 specific facts of the case, as well as the

1 **correct?**
 2 A. I wouldn't go that far. I wouldn't go that far.
 3 So -- and the reason why I wouldn't go that far is it
 4 talks about the application in light of other
 5 statutes. That, I think, is a really key -- that's a
 6 really key piece.
 7 **Q. Doesn't Order 06 say that it's only resolving the**
 8 **specific question raised by PSP's motion, though?**
 9 A. Yeah. It's limited in its scope. But it's basically
 10 giving the Commission the opportunity to make further
 11 considerations. And I don't think that that's --
 12 that's not unusual either. The UTC's report to the
 13 legislature had a very similar -- in June '21, had a
 14 very similar kind of advisement. Commission
 15 recommends that the parties consider the degree to
 16 which the Commission has successfully implemented the
 17 pilotage act. And I think that if we're looking at
 18 best achievable protection as the oil spill
 19 prevention and response standard in statute and Order
 20 06 says, consider this in light of other statutes,
 21 it's clearly within the Commission's purview to look
 22 at other statutes when informing the rate-making
 23 standard here.
 24 **Q. Doesn't Order 06 state that the best achievable**
 25 **protection standard would arguably have an indirect**

1 rate-setting standard in a piloted general rate case
 2 must be applied in light of other statutes. Which
 3 means that, since the pilotage act describes the
 4 importance of pilotage, the protection of the natural
 5 environment in light of what pilots do, which is
 6 marine protection and navigation, that Order 06 must
 7 be -- that Order 06 and best achievable protection --
 8 Order 06 basically allows the Commission to consider
 9 the standard that we have for marine oil spill
 10 prevention and response in our state in -- and apply
 11 it to the sufficiency of the resources that we're
 12 making available to our pilotage system.
 13 **Q. Mr. Costanzo, do you recall whether the order states**
 14 **that the question of what impact the best achievable**
 15 **protection standard has on this case is, quote,**
 16 **"Appropriately reserved for the Commissioners**
 17 **themselves who are charged with the final decision in**
 18 **this rate case, regardless of the outcome of this**
 19 **order and any discussion in this order, these issues**
 20 **cannot be resolved and addressed today."**
 21 **Do you remember that part of Order 06?**
 22 A. Yes.
 23 **Q. All right. So Order 06 does not set out to, you**
 24 **know, make a ruling on how the best achievable**
 25 **protection standard should be impacting this case;**

1 **impact on rate making?**
 2 A. Direct or indirect.
 3 **Q. No. I'm asking does -- does Order 06 state that it**
 4 **would only arguably have an indirect impact on rate**
 5 **making?**
 6 A. Is that -- is that specifically in the -- in the
 7 order? I don't have the order in front of me.
 8 **Q. If you don't remember, I will move on.**
 9 A. Do you have the order in front of you?
 10 **Q. So did PSP incur costs related to compliance with the**
 11 **best achievable protection standard during the test**
 12 **year in this rate case?**
 13 A. No. It wasn't -- we -- it wasn't under
 14 consideration. Best achievable protection wasn't
 15 really a -- we were providing pilotage services. It
 16 wasn't a cost -- not accounted for expenses.
 17 **Q. All right. Did PSP incur -- did PSP propose a pro**
 18 **forma adjustment related to costs that it incurred**
 19 **associated with the need to comply with the best**
 20 **achievable protection standard?**
 21 A. No.
 22 **Q. Okay. Is there any portion of PSP's overall revenue**
 23 **requirement proposal that is attributable to**
 24 **compliance with the best achievable protection**
 25 **standard?**

1 A. The revenue proposal is indeed made in light of --
2 made with consideration of best achievable protection
3 standards because we believe that best achievable
4 protection necessitates the alignment of compensation
5 and benefits of the pilotage system with a national
6 average. And that, therefore, our pro formas
7 represent our -- our proposal represents PSP at what
8 we believe is an appropriate national average
9 standard. And we believe that that aligns with best
10 achievable protections.

11 So the answer is yes.

12 **Q. So -- but can you give me a number of how much the**
13 **cost of compliance with the best achievable**
14 **protection standard has cost PSP?**

15 A. Retrospectively?

16 **Q. Yes.**

17 A. No.

18 **Q. All right. Moving on.**

19 **In your rebuttal testimony, you testify about the**
20 **pension plan mediation process; correct?**

21 A. I do.

22 **Q. Could you turn to page 31 of your rebuttal testimony**
23 **and let me know when you're there.**

24 A. There.

25 **Q. All right. Starting on line 9 of your rebuttal**

1 MR. HAGLUND: Yes. A few questions, Your
2 Honor.

3 REDIRECT EXAMINATION

4 BY MR. HAGLUND:

5 **Q. Mr. Costanzo, when it comes to costs to PSP for**
6 **compliance with the best achievable protection**
7 **standard, are there training costs being incurred now**
8 **that are related to enhancing pilot capability in**
9 **connection with tug escorts?**

10 A. Absolutely. I mean, the thing about our training
11 costs is that we try to exceed the regulatory
12 standards and regulatory minimums on training costs.
13 So the answer is yes.

14 **Q. What's the nature of the training that is being**
15 **undergone by PSP pilots related to new escort tug**
16 **tethering requirements?**

17 A. That, I'm not sure if it's bridge -- that's not the
18 bridge resource management piece. But I'm not
19 exactly sure what the specific training regime is.

20 **Q. Does it involve --**

21 MR. CALLAGHAN: Your Honor, I'm going to
22 object. This is outside of my cross-examination.

23 JUDGE HOWARD: I'm going to deny the
24 objection. I believe Mr. Haglund is acting -- asking
25 about trainings related to the best achievable

1 **testimony, you state "With hindsight, it was very**
2 **unrealistic for the UTC to expect that there was any**
3 **serious potential to achieve a mediated settlement on**
4 **an issue where the parties have been so far apart for**
5 **so long."**

6 **Is that an accurate reading?**

7 A. Indeed.

8 **Q. Did PSP raise any objections to the mediated**
9 **settlement conference that the Commission ordered in**
10 **Order 3 of this docket?**

11 A. When? At all? No, I don't think we did.

12 **Q. All right. In Order 09 of PSP's last rate case,**
13 **Order 09 required PSP to initiate discussions on the**
14 **retirement plans through workshops facilitated by a**
15 **mutually acceptable third party; correct?**

16 A. Correct.

17 **Q. Did PSP object or otherwise seek any kind of**
18 **reconsideration of this requirement in Order 09?**

19 A. Not to my knowledge, no.

20 **Q. And did PSP comply with this requirement prior to**
21 **filing the current rate case?**

22 A. We tried. But we -- we did not, no.

23 MR. CALLAGHAN: No further questions, Your
24 Honor.

25 JUDGE HOWARD: All right. Any redirect?

1 protection standard.

2 BY MR. HAGLUND:

3 **Q. To your knowledge, is there simulator training**
4 **related to new escort tug tethering requirements?**

5 A. Mm-hmm.

6 **Q. Is that a "yes"?**

7 A. Mm-hmm. Yes.

8 **Q. Now back to the discussion you had with Mr. Callaghan**
9 **regarding BAP or best achievable protection.**

10 **You quoted the standard just -- fair, just,**
11 **reasonable, and sufficient for the provision of**
12 **pilotage.**

13 **What, in your opinion, is the significance of the**
14 **word "sufficient" when it comes to your discussion of**
15 **the reconciliation of that standard with BAP in your**
16 **testimony?**

17 A. I think it's absolutely critical that we look at
18 sufficiency -- to be sufficient to attract the best
19 talent, sufficient to continue to improve, sufficient
20 to elevate the standards of training, sufficient to
21 elevate the standards of performance -- and that is
22 where best achievable protection and the standard
23 that's being applied here by the Commission
24 intersect. And that's what demands the alignment
25 with national average that we're talking about.

1 **Q. And in Order 6, and I'm quoting it here, the order**
 2 **noted that -- it actually rejected a concern that PSP**
 3 **had expressed in its motion that the standard could**
 4 **be construed from the other -- from the prior rate**
 5 **case to be a minimally adequate standard. And the**
 6 **order makes clear that PSP should not be concerned**
 7 **about that because the standard must be applied in**
 8 **light of other statutes it went on to quote, such as**
 9 **RCW 88.16.005, and I continue quoting, "which**
 10 **emphasize the importance of pilotage and the**
 11 **protection of the natural environment," closed quote.**

12 **Is that -- is it that part of Order 06 that you**
 13 **were referring to?**

14 A. Absolutely.
 15 MR. HAGLUND: No further questions.
 16 JUDGE HOWARD: All right. Thank you,
 17 Mr. Costanzo, for your testimony.
 18 THE WITNESS: Thank you.
 19 JUDGE HOWARD: You are excused from the
 20 remainder of the hearing.
 21 So as I indicated, we are going to recall
 22 Captain Klapperich -- am I saying his last name
 23 right? Klapperich?
 24 MR. HAGLUND: Klapperich, yes, Your Honor.
 25 JUDGE HOWARD: Okay. We're going to recall

1 **You're aware of that?**

2 A. Yes.
 3 **Q. Okay. So, Captain Klapperich, you are an experienced**
 4 **pilot yourself; right?**

5 A. 15 years.
 6 **Q. I would call that experienced. Would you?**

7 A. I am experienced, yes.
 8 **Q. Okay. All right.**

9 **I assume you're aware that one of the topics that**
 10 **the Commission asked TOTE and PSP to address in this**
 11 **proceeding is whether TOTE's vessels are risky or how**
 12 **does the risk compare in piloting them as compared to**
 13 **other vessels that PSP typically services.**

14 **You're aware of that?**

15 A. I don't -- I'm sorry. I don't remember the
 16 Commission specifying that. Maybe that's on me. Is
 17 that what you're saying, the Commission --

18 **Q. Okay.**
 19 A. -- spelled that out?

20 **Q. You are giving testimony as to the comparative risk**
 21 **associated with TOTE's two vessels at issue, that's**
 22 **the Midnight Sun and the North Star, as compared to**
 23 **other vessels that PSP typically services.**

24 **Am I right there?**

25 A. Yes.

1 captain for the vessel tonnage issue for TOTE's
 2 cross, and then we will have the testimony from the
 3 two TOTE witnesses, Philip Morrell, Captain
 4 Loftfield.

5 I would just like to remind the witnesses to
 6 focus on the question as posed during the cross. And
 7 focus on answering the particular question at issue.
 8 And, Captain Klapperich, I -- I'll give you a moment.

9 THE WITNESS: All right. Sorry about that.

10 JUDGE HOWARD: Yes. I would remind you that
 11 you remain under oath from this morning.

12 THE WITNESS: Okay.

13 JUDGE HOWARD: And TOTE indicated cross.

14 And, Mr. Block, you may proceed.

15 MR. BLOCK: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. BLOCK:

18 **Q. Captain Klapperich, do you hear me okay?**

19 A. I do hear you.

20 **Q. Okay. Good afternoon. Thank you for coming back to**
 21 **testify for us.**

22 **As you are aware, I'm an attorney representing**
 23 **TOTE in this proceeding with regard to the tonnage**
 24 **issues that have given rise to pilotage fees TOTE**
 25 **disputes.**

1 **Q. And your testimony answers that question, in your**
 2 **opinion, as to the levels of risk that are associated**
 3 **with these two varieties of vessels. And I**
 4 **understand from your testimony you're specifically**
 5 **familiar with TOTE's vessels, Midnight Sun and North**
 6 **Star; right?**

7 A. I've been on them a few times, yes.

8 **Q. A few times?**

9 A. Yeah. I mean, I don't know how regular it is.

10 **Q. Okay. Enough to have a working familiarity with**
 11 **their maneuverability and other aspects of piloting**
 12 **them; right?**

13 A. Yes.

14 **Q. Okay. All right. And these are what we call Ro-Ro**
 15 **vessels; right?**

16 A. Yes.

17 **Q. Is it roll-on/roll-off?**

18 A. Yes.

19 **Q. And they're designed to transport automobiles; right?**

20 A. I think, along with a lot of other things.

21 **Q. All right. But the primary purpose of a Ro-Ro vessel**
 22 **is to transport cargos consisting of automobiles; am**
 23 **I right?**

24 A. Not all of it. I mean, there's trailers, trucks.
 25 There's other things stacked on there; right?

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1 **Q. Okay. All right.**
 2 A. Lumber. House goods.
 3 **Q. Would you say that the primary purpose, the primary**
 4 **design of a Ro-Ro vessel is to transport cargos of**
 5 **automobiles?**
 6 A. In addition to truck trailers, a lot of them.
 7 **Q. Okay. I'm not saying in addition to.**
 8 **The question is the primary purpose -- I know**
 9 **that there are other varieties of cargo.**
 10 **Is the primary purpose the transport of cargoes**
 11 **consisting of automobiles?**
 12 A. I don't know that. I really don't know that. I
 13 don't know the primary purpose of a Ro-Ro besides
 14 things roll on and things roll off. That's what I
 15 actually --
 16 **Q. Okay. All right. Well, in any event, these are not**
 17 **container ships; right? They're not ships that are**
 18 **designed to hold ocean shipping containers; right?**
 19 A. Right.
 20 **Q. And the more typical variety of vessel that PSP**
 21 **services are container ships; right?**
 22 A. I'm sorry. You'd have to -- I don't know what
 23 "typical" means. We handle a lot of container ships.
 24 We handle a lot of tankers. We handle a lot of car
 25 ships. We handle a lot of bulkers.

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1 **Q. Would you say that the majority of ships that PSP**
 2 **services carry ocean shipping containers?**
 3 A. I don't know the numbers. We have a --
 4 **Q. So you --**
 5 A. We have a diverse calling of vessels. I mean --
 6 **Q. Okay. All right.**
 7 **You don't know what the typical cargo of a vessel**
 8 **that PSP services is.**
 9 **Do I have that right?**
 10 A. Define "typical."
 11 **Q. More often than not.**
 12 A. It might be --
 13 **Q. Representing a --**
 14 A. It might be --
 15 **Q. Representing the largest sample of?**
 16 A. It might be a container ship. It might be a bulker.
 17 It might be a tanker. I don't know the specific
 18 numbers. We do a lot of container ships, but we do a
 19 lot of other ships as well.
 20 **Q. All right. Well, containers can be stacked and**
 21 **packed into the holds of a vessel so that there's**
 22 **minimal space between them, right, to maximize**
 23 **carrying capacity; right?**
 24 A. Yes, correct.
 25 **Q. And a tanker, of course, is full without any space at**

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1 **all in the holds of its cargo; right?**
 2 A. If it's full, yes.
 3 **Q. And the bulk carrier will have cargo that is just**
 4 **loaded into the holds of the vessel -- of the cargo**
 5 **holds of the vessel, again with minimal, if any,**
 6 **space that's wasted to the extent that it needs to**
 7 **carry a maximum load; right?**
 8 A. Correct.
 9 **Q. But a Ro-Ro vessel doesn't work like that. You can't**
 10 **stack, be they automobiles or trailers or tractors or**
 11 **anything, just one on top of the other without space**
 12 **being left in between them.**
 13 **Am I right?**
 14 A. Yes. It's not bulk. Yes.
 15 **Q. Yes. Okay.**
 16 **There's going to have to be space between the**
 17 **cargo of a Ro-Ro, just based on the -- the**
 18 **characteristics of that cargo; right?**
 19 A. Some. Some space.
 20 **Q. A lot -- wouldn't you say a lot of space?**
 21 A. Well, I see some space -- very little space sometimes
 22 between the cargo.
 23 **Q. But what about on the top of the car before the track**
 24 **above it, isn't there a good deal of space up there**
 25 **as well?**

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1 A. I don't know the amounts. I really don't. How high
 2 the ceiling is.
 3 **Q. Okay. All right. Let's leave it with that.**
 4 **I want to move -- I have a limited amount of time**
 5 **so I want to get through my outline.**
 6 **Isn't it true, Captain Klapperich, that there are**
 7 **many vessel characteristics and operational features**
 8 **that will dictate the -- how difficult or risky they**
 9 **are to pilot? Each vessel has different**
 10 **characteristics that go into the difficulty of**
 11 **gauging the risk of their piloting; is that right?**
 12 A. Yeah.
 13 **Q. All right. And wouldn't you agree that**
 14 **maneuverability is a key factor in the risk of**
 15 **piloting?**
 16 A. Maneuverability adds, I would say, for sure.
 17 **Q. Is it a key factor?**
 18 A. Yeah.
 19 **Q. It's an important factor; right?**
 20 A. Yeah.
 21 **Q. Okay. All right.**
 22 **One of the factors in the risk and difficulty of**
 23 **piloting a vessel is its size; wouldn't you agree?**
 24 A. What -- yes. Yes, I would.
 25 **Q. I mean, I'll read from your testimony. What you said**

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1 is "The bottom line is that larger ships are more
 2 difficult to pilot and present greater risk."
 3 Do you stand by that?
 4 A. Yes.
 5 **Q. And by "larger," you mean larger in length, width,
 6 and height; right?**
 7 A. I mean in length and -- yeah. All of it.
 8 **Q. Length, width, and height measured in --**
 9 **A. Of the vessel.**
 10 **Q. -- measured in -- yes, of the vessel -- measured in
 11 feet or meters; right?**
 12 A. Yep.
 13 **Q. Okay. All right.**
 14 I read in your testimony -- and I'll just read it
 15 back to you, ask if you stand by this -- "Fair and
 16 reasonable pilotage rates should and do take into
 17 account the relative difficulty of piloting a
 18 particular ship, which in turn correlates closely to
 19 the ship's size. Because GT ITC, which is the
 20 international tonnage standard, more accurately
 21 captures the size of a ship's structures, it is a
 22 better proxy for the difficulty and risk of piloting
 23 a ship than other measurements, such as domestic
 24 gross registered tonnage or GRT, and therefore is the
 25 more appropriate metric to calculate pilotage rates

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1 for all ships, irrespective of whether they are
 2 engaged in international or domestic commerce."
 3 Do you stand by that?
 4 A. Yes.
 5 **Q. Okay. Did you write that passage yourself?**
 6 A. Yes.
 7 **Q. Okay. The clause "because GT ITC more accurately
 8 captures the size of a ship's structures," what
 9 you're referring to there is its hull and perhaps any
 10 housing on top, any fixtures to it, the dimensions of
 11 the vessel itself; right?**
 12 A. The GT ITC measurements of the complete volume of the
 13 ship.
 14 **Q. Okay. But I'm speaking specifically to the clause
 15 the ship's -- the size of a ship's structures.**
 16 **The ship's structures are the -- what I just
 17 described, the hull and the housing and any additions
 18 to the deck, things of that nature; right?**
 19 A. Yes. And --
 20 **Q. Okay.**
 21 A. Sideshow.
 22 **Q. Okay. Sideshow. That's true.**
 23 **What is a vessel's draft?**
 24 A. It's the parts of the vessel that are below the
 25 water; right?

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1 **Q. Okay. Yeah. So when you talk about what the vessel
 2 draws or its draft, it's the amount of water it
 3 displaces when it's in the water; right?**
 4 A. Part of that, yeah. I think its weight and it
 5 displaces and it has a draft.
 6 **Q. Okay. The heavier the vessel, the deeper the draft
 7 is going to be; right?**
 8 A. I would assume.
 9 **Q. Well, wouldn't you know that?**
 10 A. Yeah.
 11 **Q. I mean, it stands to reason, if you got a -- you
 12 know, two vessels, both are 300 feet long, and you
 13 load one fully with heavy cargo and the other one is
 14 empty, the one with the heavy cargo is going to go
 15 deeper into the water; right?**
 16 A. Yes.
 17 **Q. So the heavier the vessel, the deeper the draft, as a
 18 general matter; right?**
 19 A. Yes.
 20 **Q. Isn't a vessel's draft one of the characteristics
 21 that go into how difficult and risky it is to pilot
 22 it?**
 23 A. Draft is taken into consideration.
 24 **Q. Yeah. You put it into the context of us laymen, how
 25 we might visualize this -- if I'm driving a station**

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1 wagon and I want to park it in the grocery store
 2 parking lot, I can pull it into that parking lot --
 3 parking space and -- no problem, and it will make
 4 little, if any, difference whether it's loaded with
 5 concrete blocks; right? It will be the same level of
 6 risk, more or less. Might be a little bit of
 7 difference, but very little -- of parking a station
 8 wagon in a grocery store parking space, one that's
 9 empty and one that's loaded; right?
 10 **Wouldn't you agree?**
 11 A. I'm -- I'm not following you. You're saying a loaded
 12 station wagon compared to an empty station wagon are
 13 similar in risk.
 14 **Q. To park it in the parking space.**
 15 A. I disagree. I can't -- I can't draw a similar
 16 analogy to handling a ship to handling a car.
 17 **Q. Okay. I wouldn't do that either. I'm not asking you
 18 to do that right now.**
 19 **But my question is: Isn't it true that you can
 20 park a station wagon with the same level of risk,
 21 whether or not it's empty or full?**
 22 A. Yes.
 23 **Q. Okay. But that's not an analogy for a vessel because
 24 vessels aren't station wagons; right?**
 25 A. Right.

1 **Q. Vessels don't have wheels that can be very precisely**
2 **controlled. They don't have brakes. You know, you**
3 **have a lot more to consider. And a heavier vessel,**
4 **one that is deeper in the water, is going to be more**
5 **-- riskier to moor and to guide within a port**
6 **facility, things of that nature.**

7 **Am I right?**

8 A. Potentially, yes.

9 **Q. Well, wouldn't you agree? I mean, generally. There**
10 **might be some exception to that.**

11 **But as a general matter, wouldn't you agree with**
12 **me?**

13 A. No. Isn't there, like, horsepower and all of that
14 stuff involved; right?

15 **Q. As a general matter, a heavier vessel, one that is**
16 **laden with cargo and deeper into the water, is more**
17 **difficult to maneuver and moor, and therefore more**
18 **risky than one that has got a lighter draft and is**
19 **not as heavy.**

20 **Am I correct?**

21 A. I don't know about that. I really don't. I mean,
22 sometimes I have an easier time with slow speeds on
23 other ships than I do with a light ship in the wind.

24 **Q. So let's see.**

25 **Now, are you saying -- I'm talking about as a**

1 **transport cargo.**

2 **Am I right?**

3 A. I think it's a -- they use the IGT -- or the GT ITC
4 as a volumetric measurement. So they --
5 volumetrically, how much tonnage can that whole ship
6 use or carry.

7 **Q. And then what is the domestic measure?**

8 A. Spaces of cargo.

9 **Q. Okay.**

10 A. Spaces that will carry cargo.

11 **Q. And so -- I'm sorry?**

12 A. I think it's -- the domestic is the spaces that carry
13 cargo.

14 **Q. Yeah. Okay.**

15 **So, you know, as you are aware, the domestic**
16 **calculation of tonnage yields a smaller number for**
17 **these TOTE vessels than does the international one;**
18 **right?**

19 A. Yes.

20 **Q. And would you agree that because the variety of**
21 **cargo, how closely packed in it can be on a Ro-Ro**
22 **vessel, because it is lighter than a tanker or a bulk**
23 **cargo vessel or a container vessel that has**
24 **containers packed in very tightly, perhaps has up to**
25 **six containers high on the deck, wouldn't you agree**

1 **general matter. Obviously, there could be any -- if**
2 **you're mooring a light vessel in the middle of a**
3 **hurricane, that's going to be harder than mooring a**
4 **really heavy one in still water. I'm aware there's**
5 **probably some other considerations.**

6 **But as a general matter, the heavier vessel with**
7 **a deeper draft is more difficult and risky to pilot**
8 **than the lighter draft one is, all else being equal.**

9 **Do you agree with me?**

10 A. Okay.

11 **Q. You do?**

12 A. Sure.

13 **Q. Okay. All right.**

14 **When comparing -- we use different acronyms, IGT,**
15 **international, GRT, domestic. When you compare these**
16 **tonnage assessment, the methodologies, the different**
17 **metrics that go into the weight calculations, we're**
18 **measuring tonnage capacity; right?**

19 A. I think as a volume of the complete vessel.

20 **Q. Well, wait a minute.**

21 **I mean, tonnage is a measure of weight; right?**

22 A. Yeah.

23 **Q. And tonnage -- and when you talk about the level of**
24 **a -- of the amount of a vessel's tonnage, you're**
25 **talking about the capacity of weight it has to**

1 **that it makes sense that there would be a lighter**
2 **measurement under the domestic calculation than the**
3 **international because there's so much less**
4 **cargo-carrying capacity?**

5 A. I think it would require -- or I would need to know
6 what was being carried.

7 **Q. Well, let's say --**

8 A. -- compared to a bunch of empties, compared to a
9 bunch of loaded. I mean, I don't know what the cargo
10 is.

11 **Q. But let's assume that they are automobiles as**
12 **compared to the average cargo of weight that is**
13 **contained in an ocean shipping container.**

14 A. Okay.

15 **Q. Let's assume that one vessel is packed, container to**
16 **container, all the way to the ceiling, like we**
17 **typically see, and then some on the deck. All right.**
18 **And then you have the Ro-Ro vessel of the same**
19 **length, same width, but it's got cars in it with**
20 **spaces in front of, behind, on top of, below each**
21 **automobile so it cannot be packed to the same extent**
22 **that a container vessel is. Or certainly not to the**
23 **extent of a tanker or a bulk vessel. All right. You**
24 **got those two.**

25 **Wouldn't you expect under the domestic**

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1 arrangement, domestic calculation, that the tonnage
 2 would be lower?
 3 A. Well, I -- I would -- I don't like the analogy of
 4 only cars compared to loaded containers. You guys --
 5 TOTE does load other things than cars that are heavy.
 6 **Q. Wouldn't you agree that these two TOTE vessels**
 7 **typically are much lighter in the volume of cargo**
 8 **that they are transporting than vessels of equal**
 9 **size, that is equal length and width that PSP**
 10 **typically services?**
 11 A. Lighter, yes.
 12 **Q. They are lighter?**
 13 A. Yeah.
 14 **Q. They're much lighter; right?**
 15 A. Depending on the cargoes.
 16 **Q. Okay. If they're lighter, they're going to have**
 17 **lower draft, shallower draft; right?**
 18 A. Equal vessels, possibly, yeah.
 19 **Q. And if they are lighter draft, that goes into the**
 20 **level of riskiness. That's one of the considerations**
 21 **of -- of how risky they are to pilot; right?**
 22 A. Could you repeat? Because I'm thinking of -- I'm
 23 sorry. I'm thinking of the weight of the cargo and
 24 all that stuff.
 25 **Q. I'm thinking of the weight of the loaded vessel.**

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1 A. Yes.
 2 **Q. A Ro-Ro vessel, such as TOTE's two vessels, loaded**
 3 **with their automobiles, or whatever they typically**
 4 **carry that is lighter than the same length vessel**
 5 **that is carrying loaded containers or oil or bulk**
 6 **cargo that is heavier, and therefore goes deeper into**
 7 **the water.**
 8 A. Yes.
 9 **Q. Those are the comparisons.**
 10 A. Okay.
 11 **Q. Those Ro-Ro vessels are going to be lighter and have**
 12 **lowered -- a smaller amount of draft; right?**
 13 A. Yes.
 14 **Q. And that is a consideration as to how risky they are**
 15 **to pilot; right?**
 16 A. The draft is, yes.
 17 **Q. Yes. And that is reflected in the domestic**
 18 **measurement of a cargo space, that is what goes into**
 19 **the tonnage calculation, which doesn't include these**
 20 **open air spaces.**
 21 **Am I right?**
 22 A. It goes into the GT ITC as well.
 23 **Q. It goes into the -- the cargo -- are you saying that**
 24 **if a Ro-Ro vessel is measured under a -- the**
 25 **international standard, the decks that are open, as**

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1 we've described, would still be calculated in the
 2 tonnage?
 3 A. I thought you were just saying that the draft was
 4 only calculated by GRT.
 5 **Q. No. I'm not talking about the draft here.**
 6 **We're talking about what domestic tonnage is**
 7 **assessed to a vessel. The Ro-Ros don't get assessed**
 8 **on these decks that have open air spaces to**
 9 **accommodate automobile or Ro-Ro type cargoes; right?**
 10 A. I'm trying to -- I'm not a tonnage expert.
 11 **Q. Oh, okay. All right.**
 12 A. I know that the GRT, the domestic tonnage is based on
 13 a volumetric measurement of cargo-carrying space.
 14 **Q. All right. Well, let's see.**
 15 **I'm reading from your testimony again.**
 16 **"Generally speaking, GT ITC is generally based on the**
 17 **molded volume of all enclosed spaces of the ship,**
 18 **whereas GRT or net tonnage is based on the molded**
 19 **body of only cargo-carrying spaces of the ship, but**
 20 **various rules allow for the exclusion of space that**
 21 **is actually used for cargo."**
 22 **Do you stand by that?**
 23 A. Yes.
 24 **Q. Okay. And these Orca class vessels have a good deal**
 25 **of cargo -- or deck space that isn't filled with**

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1 cargo because of the nature of cargo that they carry.
 2 Am I right?
 3 A. Correct. Yes.
 4 **Q. There's been discussion about the open sides of the**
 5 **hulls. I don't know if you've seen that. It didn't**
 6 **necessarily come from you.**
 7 **But I was going to ask you, are you aware that**
 8 **those -- because you piloted these vessels, are you**
 9 **aware that those open sides serve the purpose of**
 10 **ventilation on the decks that contain automobiles?**
 11 A. No, I'm not aware of that. I don't know their
 12 function. I don't know their function. Sorry.
 13 **Q. You don't know their function. Okay. All right.**
 14 **On a container ship, containers could be stacked**
 15 **on the top deck; right?**
 16 A. The main deck, yes.
 17 **Q. The main deck. Yeah.**
 18 A. I think it's called the main deck.
 19 **Q. The main deck. All right.**
 20 **You see containers stacked on the very top deck,**
 21 **the main deck; right?**
 22 A. Yeah.
 23 **Q. And they can be stacked up to six containers high;**
 24 **right?**
 25 A. I don't know the count.

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1 **Q. You don't know the count?**
 2 A. Yeah. Less. More. Up to.
 3 **Q. Have you ever encountered a problem because of**
 4 **containers being so high on the top deck of a vessel**
 5 **that they block your view when you're trying to pilot**
 6 **the vessel?**
 7 A. Personally, no.
 8 **Q. Have you heard of that?**
 9 A. I know there's IMO -- or I think they're IMO
 10 regulations, there has to be a line of sight -- it's
 11 a regulation -- out in front of the vessel. So they
 12 only stack so high as -- the closer they get to the
 13 wheelhouse; right?
 14 **Q. Okay. All right. I'm running out of time,**
 15 **Captain Klapperich, so I want to race through the**
 16 **little bit of my outline that I've got here.**
 17 **Earlier you agreed that multiple aspects of a**
 18 **vessel might impact how risky it is to pilot. One of**
 19 **those might be the length and width and height and**
 20 **another one might be the draft.**
 21 **You know, I assume you read Captain Lofffield's**
 22 **testimony; right?**
 23 A. I have, yes.
 24 **Q. And he lists any number of vessel features of these**
 25 **Ro-Ro vessels that he believes renders them more**

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1 maneuverable, more agile, easier to pilot, less
 2 risky. And your response was, gee, all vessels have
 3 different characteristics that could render them more
 4 or less risky; right?
 5 A. Yes.
 6 **Q. The one you pointed to specifically was the absence**
 7 **of bow thrusters on the Ro-Ro vessels.**
 8 **Do you recall that?**
 9 A. Yeah.
 10 **Q. A bow thruster is used in the very end of the process**
 11 **of mooring a vessel, right, when it's going very**
 12 **slow, to complete the -- the dock; right?**
 13 A. It's used in docking and it's also used in emergency
 14 situations and it's also used in anchoring.
 15 **Q. And the Ro-Ro vessels don't have them; right?**
 16 A. TOTE's do not.
 17 **Q. TOTE's do not. TOTE's vessels don't have them.**
 18 **Okay.**
 19 A. Yeah.
 20 **Q. So what does that mean? I mean, doesn't that mean --**
 21 **the only consequence of that is that if a -- if the**
 22 **precision of a bow thruster is not available, we have**
 23 **to use a tug; right?**
 24 A. TOTE does, yes.
 25 **Q. TOTE has to use a tug. And that might mean that you,**

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1 as a PSP pilot, have to wait for the availability of
 2 a tug in order to complete moorage; right?
 3 A. Yes.
 4 **Q. And that's really the only complicating factor, isn't**
 5 **it?**
 6 A. No, not at all. You can --
 7 **Q. What's another complicating factor?**
 8 A. Well, you can dock with a bow thruster. You can
 9 depart with a bow thruster. You can steer the ship
 10 going backwards with a bow thruster. You can turn it
 11 its own length with a bow thruster.
 12 **Q. A tug couldn't do all that?**
 13 A. A tug is an assist boat. Yeah, it would assist you.
 14 But if you're comparing vessel to vessel, in some
 15 instances, an Orca class vessel might be handier.
 16 But in other instances, a single-screw vessel with a
 17 bow thruster will be handier.
 18 **Q. I will -- okay. I'm going to back off because I'm**
 19 **running out of time.**
 20 **But I want to conclude here, you know, with the**
 21 **concept of the riskiness of the pilotage of a vessel,**
 22 **which I'll represent to you that is one of the things**
 23 **the Commission was interested in hearing about and**
 24 **you have given testimony about.**
 25 **Would you agree that more maneuverable, more**

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1 agile, more easily handled vessels are less risky to
 2 pilot than ones that don't have those qualifications,
 3 those characteristics?
 4 A. I think it's a vague question. I really do.
 5 **Q. Is it a vague question?**
 6 **Do you think there is any significance in how**
 7 **risky it is to pilot a vessel as to the level of its**
 8 **maneuverability and handling?**
 9 A. Could you repeat it again, please? The question.
 10 **Q. If you're trying to assess the level of risk or**
 11 **difficulty in piloting a vessel, wouldn't a**
 12 **significant consideration be how maneuverable it is**
 13 **and how easily it handles?**
 14 A. Sure. Yes.
 15 **Q. Well, I'm just reading your testimony,**
 16 **Captain Klapperich.**
 17 A. Yes.
 18 **Q. And you said you believe it would be totally**
 19 **inappropriate to consider the specific ship handling**
 20 **or maneuverability characteristics of TOTE's Orca**
 21 **class vessels in determining pilotage rates.**
 22 **Do you not stand by that?**
 23 A. Yes, I do.
 24 **Q. You do stand by that?**
 25 A. Yeah. Could you point me to where you're --

1 **Q. That's on your rebuttal testimony -- I can pull it up**
 2 **here.**
 3 A. Oh. I have it also.
 4 **Q. Rebuttal testimony, page 4, line 10.**
 5 A. Okay.
 6 **Q. It reads, "It would be totally inappropriate to**
 7 **consider the specific ship handling or**
 8 **maneuverability characteristics of TOTE's Orca class**
 9 **vessels in determining pilotage rates."**
 10 A. Yes. I stand behind what I said. Yes.
 11 **Q. Well, aren't you saying that it would be**
 12 **inappropriate to consider how risky it is to pilot a**
 13 **vessel in determining its pilotage rates?**
 14 A. What I'm saying is it would be inappropriate to
 15 consider rates just based on maneuverability,
 16 handling characteristics of a ship. We take into
 17 consideration the overall size of the ship.
 18 **Q. Well, you didn't say it would be totally**
 19 **inappropriate to consider only the specific ship**
 20 **handling. Someone might agree with that.**
 21 **But you're saying it would be inappropriate to**
 22 **consider the specific ship handling or**
 23 **maneuverability characteristics of these vessels --**
 24 A. Yes.
 25 **Q. -- in considering pilotage rates.**

1 A. Yes.
 2 **Q. Okay. Did you research the history of that?**
 3 A. I researched -- it's been going on before I was a
 4 pilot.
 5 **Q. But did you research with people perhaps that had**
 6 **been there longer or any historical records, things**
 7 **like that, as to why PSP, beginning 20 odd years --**
 8 **about 20 years ago, charged pilotage fees based on**
 9 **domestic tonnage of these vessels?**
 10 A. I called a few retired pilots.
 11 **Q. What did they say?**
 12 A. They didn't have an answer.
 13 **Q. Do you know why it was continued over the course of**
 14 **20 years?**
 15 A. I don't know why.
 16 **Q. No one had any idea about that either?**
 17 MR. HAGLUND: Objection. Asked and
 18 answered.
 19 MR. BLOCK: That's a different question.
 20 BY MR. BLOCK:
 21 **Q. No one had any idea about why it was continued, not**
 22 **just why it was instigated?**
 23 A. I honestly do not know why it was started or has
 24 continued.
 25 **Q. And no one you asked about it had any idea either; am**

1 A. Yeah. We don't -- we're not creating -- we're not
 2 creating a tariff based on -- we haven't created a
 3 tariff based on ship handling characteristics. If
 4 a -- if a twin-screw vessel loses their engine, what
 5 do we do with the maneuvering characteristics of it?
 6 **Q. I'm not quite sure I understand this.**
 7 **Are you saying that it is inappropriate to**
 8 **consider how risky it is to pilot a vessel in**
 9 **determining pilotage rates?**
 10 MR. HAGLUND: I'm going to object, Your
 11 Honor. I think this is cumulative. It's been asked
 12 and answered. And he's past his time.
 13 JUDGE HOWARD: Mr. Block, I would encourage
 14 you to -- to finish your cross. I believe this was
 15 asked and answered.
 16 MR. BLOCK: Okay. All right. Okay. I just
 17 have one last question to get into.
 18 BY MR. BLOCK:
 19 **Q. Captain Klapperich, one of the things you write is**
 20 **"The disparate treatment of TOTE's maritime" -- "TOTE**
 21 **Maritime's vessels that prevailed until our**
 22 **association's most recent rate case is the product of**
 23 **historical practice that was not justified and**
 24 **created a substantial undeserved windfall to TOTE."**
 25 **Do you stand by that?**

1 **I right?**
 2 A. Correct.
 3 **Q. Okay. Well, if you don't know the whys and**
 4 **wherefores of why it was instigated and continued**
 5 **over the course of 20 years, how can you say it was**
 6 **unjustified?**
 7 A. Because I -- my opinion and my testimony is that TOTE
 8 paid a GRT rate and everybody else paid a GT ITC
 9 rate. And we're piloting the whole ship, that's what
 10 we base our tariff off of is the GT ITC.
 11 MR. BLOCK: Nothing further, Your Honor.
 12 Thank you, Captain Klapperich.
 13 JUDGE HOWARD: All right. Any redirect?
 14 MR. HAGLUND: Yes.
 15 REDIRECT EXAMINATION
 16 BY MR. HAGLUND:
 17 **Q. If we could call up Exhibit IC-15,**
 18 **Captain Klapperich. I want to show you some quick**
 19 **statistics that are in the record regarding the**
 20 **nature -- the diversity of your vessels traffic in**
 21 **Puget Sound. If you could blow up the middle**
 22 **category of data. The third one down. If you**
 23 **could -- the second one down, which shows total**
 24 **assignments by vessel class.**
 25 **Can you see that, Captain Klapperich?**

1 A. Yes.
 2 **Q. And this -- if you look at the 2022 year, this is**
 3 **going to display by vessel type the total number of**
 4 **assignments last year. And you've got about eight**
 5 **different categories.**
 6 **Can you see it there on the screen?**
 7 A. Of vessels?
 8 **Q. Yes.**
 9 A. Across the -- I think I'm on the right page.
 10 **Q. So on the first column there for bulkers, 2022, there**
 11 **are 1267 assignments.**
 12 A. I'm not sure I'm seeing the whole sheet.
 13 **Q. Is he -- he boxed that --**
 14 A. I see bulkers -- oh, yeah, there we go. I got it.
 15 Yeah.
 16 **Q. So now you're oriented?**
 17 A. Yes.
 18 **Q. And if we go two to the right for the containers, you**
 19 **got car carriers almost 500, then containers 2120.**
 20 **That's the single biggest -- well, actually that's**
 21 **second to tankers on the far right --**
 22 A. Yeah.
 23 **Q. So the suggestion that containers are your largest**
 24 **single category of assignment was not the case in**
 25 **2022?**

1 **of the United States was a Ro-Ro ship off of**
 2 **Brunswick, Georgia that capsized in 2019?**
 3 A. No.
 4 **Q. We have another witness who will be able to testify**
 5 **about that Ro-Ro.**
 6 **Do TOTE's ships draw water, have a large sail**
 7 **area, and carry containers, in your experience?**
 8 A. Yes.
 9 **Q. You've seen containers carried by TOTE's ships?**
 10 A. I'm not sure "container" is the right word.
 11 **Q. But have you seen what ordinary people would call**
 12 **containers that ride on trucks once they're delivered**
 13 **on --**
 14 A. A container could be loaded on a TOTE ship -- onto a
 15 chassis towed by a truck, yes.
 16 **Q. And you see all sorts of equipment other than cars on**
 17 **Ro-Ros that TOTE runs --**
 18 A. Yes.
 19 **Q. -- in the times that you've been aboard those ships?**
 20 A. Yes. A lot of different --
 21 JUDGE HOWARD: I'm going to jump in and
 22 remind that more open-ended questions are appropriate
 23 for redirect and more persuasive for the finders of
 24 fact.
 25 MR. HAGLUND: Thank you, Your Honor.

1 A. Correct.
 2 **Q. First was tankers. Second was containers. We have a**
 3 **category for Ro-Ro, that's the second from the right.**
 4 A. Yes.
 5 **Q. That's basically the TOTE assignments, is it not?**
 6 A. Yes.
 7 **Q. Okay. So this -- would it be fair to say that this**
 8 **displays quite a level of diversity of assignments --**
 9 A. Yes. And vessels calling, yes.
 10 **Q. Okay. In terms of vessel types, diversity of vessel**
 11 **types is a major feature.**
 12 **So I want to ask you some questions about the**
 13 **TOTE ships in terms of their -- there was an emphasis**
 14 **near the end of your questioning on lighter cargos.**
 15 **Do the TOTE ships have a large sail area?**
 16 A. I -- in my opinion, yes.
 17 **Q. Meaning the side shell is --**
 18 A. Rises up above the deck line, yes.
 19 **Q. And if they're drawing less water, lighter in cargo**
 20 **weight, they're going to be more exposed to wind --**
 21 A. Yes.
 22 **Q. -- than vessels that are deeper draft?**
 23 A. Yes.
 24 **Q. And are you familiar with the -- what is, at this**
 25 **point, the largest capsizing casualty in the history**

1 BY MR. HAGLUND:
 2 **Q. Under what circumstances, Captain Klapperich, does a**
 3 **bow thruster assist you in managing a challenging**
 4 **assignment?**
 5 A. Bow thrusters are an additional tool. They can be as
 6 powerful as a tugboat. They're most effective going
 7 alongside or coming away from the berm with parallel
 8 movement. And they're super effective when you are
 9 backing a ship astern, moving it. They steer the
 10 ship. They're there for steering a ship going
 11 astern.
 12 **Q. In connection with the TOTE vessels that are running**
 13 **twice a week into and out of Puget Sound in an Alaska**
 14 **trade lane, is there any necessity to -- for the**
 15 **vessels to move stern first?**
 16 A. Every transit southbound to Tacoma requires the
 17 vessel to transit for approximately one mile astern.
 18 **Q. How would you characterize the challenge of piloting**
 19 **a TOTE vessel forward versus astern?**
 20 A. Well, forward is maneuverable because it points
 21 forward and you can take advantage of their
 22 propulsion system.
 23 However going astern, TOTE's vessels are not very
 24 maneuverable as far as comparing to a container ship,
 25 where you can use the bow thruster to steer it in any

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1 direction.

2 **Q. What would be your comment on the nature of the risks**

3 **in a TOTE pilotage assignment in the event of a loss**

4 **of propulsion?**

5 A. One engine? One propeller or two?

6 **Q. Well, why don't you cover both.**

7 **First the loss of a single screw and, second,**

8 **both propellers.**

9 A. Well, depending on the situation, one propeller, TOTE

10 still has the ability to maneuver. But like a

11 single-screw vessel, at that point, with no bow

12 thruster. In the event of losing propulsion on both

13 engines, now the TOTE vessel is just a 65,000-gross

14 ton vessel without propulsion.

15 **Q. Subject to wind and --**

16 A. Oh, subject to all the elements, and requiring a tow,

17 just like any vessel without power.

18 MR. HAGLUND: No further questions.

19 JUDGE HOWARD: All right. Thank you.

20 Do we have any questions from the bench for

21 this witness?

22 COMMISSIONER DOUMIT: Yes, Your Honor. I

23 have a few questions, please.

24 JUDGE HOWARD: Please proceed.

25 COMMISSIONER DOUMIT: Thanks.

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1 Captain Klapperich, sort of following up where

2 Mr. Block left off, the last quote that he provided

3 from your testimony -- for the record, that was

4 Exhibit ECK-1T at page 51. You can tell me when

5 you're there.

6 THE WITNESS: Yep.

7 COMMISSIONER DOUMIT: And it was quoted

8 line 15, where you stated, "The disparate treatment

9 of TOTE, as a historical practice, it was not

10 justified and created a substantial undeserved

11 windfall to TOTE."

12 You testified you didn't know the historical

13 reason for the disparate rate. But I have a few

14 other questions along those lines that I'm going to

15 propose to you. You may not know the answer, but I'm

16 going to pose them because I'd like to try to find

17 out a little more about the distinction.

18 Is TOTE, to your knowledge, the only PSP rate

19 pair in recent years that has operated exclusively in

20 coast wide trade?

21 THE WITNESS: No.

22 COMMISSIONER DOUMIT: So do you know how the

23 others who -- who operate in coast wide trade were

24 billed?

25 THE WITNESS: It would be easier, I think,

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1 if I'm accurate, Mr. Commissioner, that everybody is

2 billed on GT ITC. We feel that's a fair and accurate

3 measurement of the ship's overall safety and risk, if

4 you will. And TOTE is the only customer that is

5 billed GRT or domestic tonnage.

6 COMMISSIONER DOUMIT: Okay. Can you tell me

7 the others, just to your knowledge, others who are

8 operating in coast wide trades that are billed GT ICT

9 [sic]?

10 THE WITNESS: What companies they are?

11 COMMISSIONER DOUMIT: Yes.

12 THE WITNESS: Horizon. Sorry. They've been

13 purchased by Madsen. It's Madsen, Polar Tanker

14 Company, Alaska Tanker Company.

15 COMMISSIONER DOUMIT: Are they -- are -- the

16 Polar and Alaska, it sounds like, by virtue of their

17 names, are tankers; is that right?

18 THE WITNESS: Yeah.

19 COMMISSIONER DOUMIT: And the first one,

20 Madsen, what kind of a ship is that?

21 THE WITNESS: Madsen are container service.

22 COMMISSIONER DOUMIT: Containers. Okay.

23 Last question.

24 Does PSP provide piloting services for ships

25 that have not been listed in Lloyd's registry of

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1 ships? Do you know?

2 THE WITNESS: I'm not sure how the registry

3 works. I'm pretty sure every ship we pilot is in a

4 Lloyd's registry. But I'm not -- you know.

5 COMMISSIONER DOUMIT: Okay. I think -- I

6 think no further questions from me, Your Honor.

7 Thank you, Captain.

8 THE WITNESS: Yep.

9 JUDGE HOWARD: All right. Thank you,

10 Captain Klapperich for your testimony. You are

11 excused for the remainder of the hearing.

12 THE WITNESS: Thank you.

13 JUDGE HOWARD: And I believe I neglected to

14 ask if there were any questions from the bench for

15 PSP witness, Costanzo.

16 Were there any questions from the bench for

17 Costanzo?

18 CHAIR DANNER: Thank you, Your Honor. I had

19 no questions.

20 COMMISSIONER RENDAHL: And I have no

21 questions.

22 COMMISSIONER DOUMIT: No, Your Honor. Thank

23 you.

24 JUDGE HOWARD: All right. Thank you.

25 Our next witness, because we are continuing

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1 with the vessel tonnage issue, is TOTE's witness,
 2 Philip Morrell. If Mr. Morrell could turn on his
 3 video feed and I'll swear you in.
 4 All right. Can you hear me all right? You may
 5 need to unmute yourself.
 6 THE WITNESS: Okay. How is that? Does that
 7 work?
 8 JUDGE HOWARD: Good. If you can please
 9 raise your right hand, I'll swear you in.
 10 * * * * *

11 Philip Morrell, having been first duly sworn, was
 12 examined and testified as
 13 follows:
 14 THE WITNESS: Yes.
 15 JUDGE HOWARD: All right. Mr. Block, would
 16 you please introduce the witness.
 17 MR. BLOCK: Yes, Your Honor.
 18 Good afternoon, Mr. Morrell. Did you -- could
 19 you please state your name for us, your full name?
 20 THE WITNESS: Philip, P-H-I-L-I-P.
 21 M-O-R-R-E-L-L, Morrell is my last name.
 22 MR. BLOCK: And where are you employed?
 23 THE WITNESS: TOTE Services, LLC.
 24 MR. BLOCK: Okay. Did you submit written
 25 testimony in this proceeding that you issued under
 oath?

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1 THE WITNESS: Yes.
 2 MR. BLOCK: Do you adopt and submit that
 3 testimony here?
 4 THE WITNESS: Yes.
 5 MR. BLOCK: Okay. I tender the witness for
 6 examination -- cross-examination.
 7 JUDGE HOWARD: All right. Thank you.
 8 PSP indicated cross for this witness.
 9 You may proceed.
 10 MR. BRICKENSTEIN: Thank you, Your Honor.
 11 CROSS-EXAMINATION
 12 BY MR. BRICKENSTEIN:
 13 **Q. Mr. Morrell, my name is Eric Brickenstein. I'm one**
 14 **of the attorneys for Puget Sound Pilots. I just want**
 15 **to start with some introductory questions.**
 16 **Your career has been entirely on the shore side**
 17 **of the maritime industry; is that correct?**
 18 A. Yes.
 19 **Q. So you don't have any mariners credentials, have**
 20 **never been a pilot?**
 21 A. Correct.
 22 **Q. And so you have no personal knowledge or experience**
 23 **regarding the relative difficulty or risk of piloting**
 24 **different vessels of different types or sizes?**
 25 A. Correct.

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1 **Q. Okay. Before we really get going, I want to ask you**
 2 **a clarifying question, because I thought I heard**
 3 **Mr. Block suggest that gross tonnage, whether gross**
 4 **registered tonnage under the domestic system -- which**
 5 **I'll refer to as GRT -- or under the international**
 6 **system -- which I'll call GT ITC. I just want to**
 7 **clear up, I thought I heard some suggestion that**
 8 **those were weight measurements, but they're actually**
 9 **volumetric measurements; correct?**
 10 A. Correct.
 11 **Q. Neither --**
 12 MR. BLOCK: Objection. That's beyond the
 13 scope. Mischaracterizes the earlier questions.
 14 JUDGE HOWARD: I'm going to deny the
 15 objection.
 16 You may proceed.
 17 BY MR. BRICKENSTEIN:
 18 **Q. So just to clarify following the objection, neither**
 19 **GRT nor GT ITC is predicated on weight or the density**
 20 **of cargo or anything of that nature; correct?**
 21 A. Correct.
 22 **Q. Okay. You testify -- you state in your testimony --**
 23 **you characterize the TOTE ships as, quote/unquote,**
 24 **small. And I want to talk about that for a moment.**
 25 **Just to be clear, the TOTE ships, the Midnight**

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1 **Sun and the North Star, they're sister vessels;**
 2 **correct? They're exactly the same size?**
 3 A. Yes.
 4 **Q. And those vessels are 839 feet long; is that true?**
 5 A. Correct.
 6 **Q. And they carry more than 664,000 gallons of fuel; is**
 7 **that right?**
 8 A. Yes.
 9 **Q. I want to show you a quick video just so we can gauge**
 10 **the size of these ships.**
 11 MR. BRICKENSTEIN: Could you please pull up
 12 ECK-11?
 13 (Video played.)
 14 BY MR. BRICKENSTEIN:
 15 **Q. Were you able to see that video, Mr. Morrell?**
 16 A. Yes.
 17 **Q. And just to confirm, that's a Puget Sound pilot -- in**
 18 **fact, I'll represent to you that that's Captain**
 19 **Klapperich climbing up the pilot ladder in the side**
 20 **shell of a TOTE ship; is that right?**
 21 A. Yes. It looks that way.
 22 **Q. Okay. Could you please pull up Exhibit IC-15?**
 23 **And if you can scroll up just a little bit,**
 24 **please.**
 25 **Do you see there, Mr. Morrell, in that second**

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1 row, second main row, it says, "average GT per
2 assignment."
3 A. Mm-hmm.
4 **Q. And then the years are listed 2016 through 2022?**
5 A. Mm-hmm.
6 **Q. And if you just move across the different classes of
7 ship, it says -- on the right side, it says "Average
8 GT per assignment" and on left as well. If you
9 scroll across the types of ships, it says bulker, car
10 carrier, container, et cetera. And then you get down
11 to Ro-Ro. And beginning in 2016, it's 59,445 GT all
12 the way down to 61,849 GT ITC is the average size of
13 a Ro-Ro ship; right?**
14 A. Well, that's what it says here.
15 **Q. Okay. Assuming that's correct, the TOTE ships have a
16 GT ITC of 65,314; is that true?**
17 A. Yeah. But ours aren't pure Ro-Ro car carrier type
18 ships that you're indicating here. Ours are trailer
19 ships.
20 **Q. Yeah. And that's actually an interesting point.
21 Because I thought during Mr. Block's questioning, he
22 was indicating that the TOTE ships were primarily
23 carrying cars. But in fact, car carrier is its own
24 category. And the Ro-Ro ships down in the right are
25 distinguished precisely because the TOTE ships don't**

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1 primarily carry cars. They carry tractor-tailers; is
2 that right?
3 A. Anything on wheels.
4 **Q. You previously served -- we can take the exhibit
5 down. Thanks.
6 You previously served on the Washington Board of
7 Pilotage Commissioners; is that right?**
8 A. Yes.
9 **Q. Okay. And so you understand, don't you, that the
10 Washington Administrative Code actually requires
11 pilots to take -- level up ships -- excuse me,
12 level-up trips in their licensure and achieve greater
13 levels of licensure based on their years of
14 experience?**
15 A. Yes.
16 **Q. Okay. And one of the factors is newer pilots aren't
17 permitted to pilot certain larger ships; correct?
18 The more experience you have, the bigger the ship you
19 can pilot; right?**
20 A. That's my understanding.
21 **Q. All right. And in fact, a ship greater than 60,000
22 GT ITC, requires a year-four pilot at minimum.
23 Is that true?**
24 A. I'm not exactly certain where the break line is.
25 But...

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1 **Q. Sir, could we pull up -- it's in the demonstrative
2 exhibit folder, WAC 363-116-082.
3 Limitations on new pilots, do you see that,
4 Mr. Morrell?**
5 A. Mm-hmm.
6 **Q. And if you could just scroll down a little bit, and
7 you can see all the different license years and their
8 restrictions? That's fine. Thank you.
9 So do you see there in the left column -- and
10 take a moment to familiarize yourself if you need.
11 But license year four is permitted to pilot a
12 non-tank ship of up to 70,000 GT ITC.
13 Do you see that?**
14 A. Mm-hmm.
15 **Q. And a level year three cannot pilot a 65,000-ton GT
16 ITC ship. They can only go up to 60,000; correct?**
17 A. Mm-hmm.
18 **Q. Is that a "yes"?**
19 A. Yes.
20 **Q. And conversely, if you look at license year one, a
21 brand-new pilot in their first year of experience can
22 pilot a ship up to 38,000 GT ITC.
23 Do you see that?**
24 A. Yes.
25 **Q. Now, the reason that only more seasoned and**

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1 experienced pilots are permitted to pilot ships as
2 large as 65,000 GT ITC like the TOTE ships, is
3 because larger ships, the BPC has determined, present
4 a comparatively greater degree and difficulty of
5 pilotage and risk.
6 **Wouldn't you agree?**
7 MR. BLOCK: Objection, Your Honor. This is
8 way outside of the scope of anything Mr. Morrell
9 testified to in his direct testimony.
10 MR. BRICKENSTEIN: Your Honor, Mr. Morrell
11 testified to the relative risk presented by vessels
12 and argued that TOTE ought to be charged on its GRT
13 as opposed to GT ITC on that basis.
14 And the position that TOTE is taking is that it
15 should be assessed pilotage based on a tonnage level,
16 that if -- if the licensure level required was
17 predicated on GRT, a first-year pilot would be able
18 to. So it's directly relevant to his testimony.
19 MR. BLOCK: That's way outside of the point
20 that Mr. Morrell -- any point that Mr. Morrell got
21 into in his direct testimony. He had no testimony
22 regarding qualifications of pilots.
23 JUDGE HOWARD: I will allow the question. I
24 do note that in Mr. Morrell's testimony, he's
25 commenting on the relative size of the TOTE ships as

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1 justifying the invoicing based on GRT. I do imagine,
 2 though, that any more questions along these lines
 3 would be better posed to Captain Lofffield.
 4 MR. BRICKENSTEIN: Thank you, Your Honor.
 5 Let me just restate that last question, though,
 6 Mr. Morrell.
 7 BY MR. BRICKENSTEIN:
 8 **Q. The reason that only more seasoned pilots are -- in**
 9 **your experience as a former BPC commissioner, the**
 10 **reason this rule exists is to ensure that experienced**
 11 **pilots pilot larger, riskier ships; correct?**
 12 A. Could be. I -- I'm not certain on that, to be honest
 13 with you.
 14 **Q. Now, I just want to be clear.**
 15 **TOTE ships' GRT, their gross registered tonnage**
 16 **is 35,825; is that right?**
 17 A. Correct.
 18 **Q. And so if this rule were assessing the relative risk**
 19 **of a ship based on its GRT, a first-year pilot would**
 20 **be allowed to pilot the TOTE ship; right?**
 21 A. Mm-hmm. Yep.
 22 **Q. But instead the BPC has determined that you need to**
 23 **be at least in your fourth year of licensure.**
 24 MR. BLOCK: Objection. Again, outside the
 25 scope. This is calling for legal conclusions, as

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1 well.
 2 JUDGE HOWARD: I think that particular
 3 question was asked and answered.
 4 BY MR. BRICKENSTEIN:
 5 **Q. Can we please pull up PE-8T and go to page 2.**
 6 **Mr. Morrell, have you reviewed, in the course of**
 7 **preparing for this hearing, Mr. Phil Essex's**
 8 **testimony in this rate case?**
 9 A. I believe I have.
 10 **Q. Okay. And on page 2, between lines 12 and 20, I'd**
 11 **like to read you an excerpt from Mr. Morrell's [sic]**
 12 **testimony. It says, quoting, "I have reviewed the**
 13 **ABS regulatory tonnage calculation for the Orca class**
 14 **ships prepared by D. W. Goebel in September 2001.**
 15 **Mr. Goebel correctly exempts as," quote/unquote,**
 16 **"open space," "17,953 tons on the Orca class vessel's**
 17 **main deck and an additional 15,050 tons on the second**
 18 **deck. The aggregate total of these spaces -- over**
 19 **33,000 tons -- translates to over 3.3 million cubic**
 20 **feet."**
 21 **Skipping ahead a little bit. "Looking at the**
 22 **in-board profile of the vessels for a graphic**
 23 **depiction, it's clear that these two decks comprise**
 24 **approximately half the vessel's hull."**
 25 **Wouldn't you agree with Mr. Essex that the**

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1 **primary driver, about 33,000 tons, of the discrepancy**
 2 **between the TOTE ships GRT and their GT ITC, is based**
 3 **on the exclusion of the ship's main and second decks**
 4 **from the GRT calculation?**
 5 MR. BLOCK: Objection. Outside the scope.
 6 MR. BRICKENSTEIN: Your Honor, he's
 7 testifying about the difference in the tonnage
 8 calculations and arguing that -- that GT ITC
 9 shouldn't be applied. This is directly relevant to
 10 his testimony.
 11 JUDGE HOWARD: Can you point to
 12 Mr. Morrell's testimony where he is discussing his
 13 familiarity --
 14 MR. BRICKENSTEIN: Sure.
 15 JUDGE HOWARD: -- his familiarity with these
 16 calculations.
 17 MR. BRICKENSTEIN: Your Honor, he argues
 18 that the vessels are smaller based on their carrying
 19 capacity in terms of TEU units. And he also states
 20 that the exclusion in the GRT system is for space not
 21 carrying cargo or exempted space. And I can pull up
 22 the precise page and line if you give me just a
 23 second.
 24 JUDGE HOWARD: I see the testimony in
 25 question. I'll allow the question.

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1 MR. BRICKENSTEIN: Thank you, Your Honor.
 2 BY MR. BRICKENSTEIN:
 3 **Q. Do you need me to restate the question, Mr. Morrell?**
 4 A. Yeah. I'm not quite sure what your question was.
 5 **Q. Sure.**
 6 **There's a discrepancy of more than 30,000 tons**
 7 **between the GT ITC and the GRT calculations.**
 8 **Mr. Essex has testified that the explanation for that**
 9 **differential is that under the GRT calculation, the**
 10 **main and second decks are excluded from the total and**
 11 **under the GT ITC, they are not.**
 12 **Would you agree with that?**
 13 A. They're excluded. They're open deck. Yeah.
 14 **Q. Okay. I'd like to show you an image rendering of the**
 15 **TOTE ships that I think will help explain why this**
 16 **space is excluded from their GRT calculation.**
 17 **Could we pull up PE-1T and go to page 16.**
 18 **Are you able to see that image, Mr. Morrell?**
 19 A. Yes.
 20 **Q. And do you see the openings that are circled in blue**
 21 **right there?**
 22 A. Yes.
 23 **Q. When you say those decks are open space, isn't the**
 24 **reason that they're considered open space for GRT**
 25 **calculation purposes the existence of those openings**

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1 **in the rear on the stern?**
 2 MR. BLOCK: Objection. Outside the scope.
 3 MR. BRICKENSTEIN: Your Honor, it goes to
 4 the same point I was making before. He has stated
 5 that the reason these spaces are excluded from the
 6 GRT calculation is because they're open space. And I
 7 want to show what that open space means and why it's
 8 considered that under the GRT system.
 9 JUDGE HOWARD: I'll allow the question.
 10 THE WITNESS: These are operational
 11 openings. They're for natural ventilation and for
 12 loading and discharging cargo. That's what this is.
 13 BY MR. BRICKENSTEIN:
 14 **Q. Thank you, Mr. Morrell.**
 15 **But I just want to be clear, those two decks that**
 16 **are within the side shell of the ship that are**
 17 **subject to those openings and comprise more than half**
 18 **the hull, none of that gets counted in the ship's**
 19 **GRT; isn't that right?**
 20 A. I wouldn't say none of it.
 21 **Q. The large majority, more than 33,000 tons?**
 22 A. Could be.
 23 **Q. Okay. Mr. Morrell, those two decks are used for**
 24 **carrying cargo, are they not?**
 25 A. Yes.

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1 **Q. I'd like to read you another excerpt from Mr. Essex's**
 2 **testimony. And if we can go to 8T page 2, line 21.**
 3 **08T, page 2. Never mind. We don't need it. Let's**
 4 **move on.**
 5 **Mr. Morrell, isn't it true that PSP assesses**
 6 **tonnage pursuant to its tariff to all ships, whether**
 7 **engaged in coastwise or foreign shipping, based on**
 8 **their GT ITC?**
 9 MR. BLOCK: Objection. Lack of foundation.
 10 BY MR. BRICKENSTEIN:
 11 **Q. Mr. Morrell, have you read PSP's tariff?**
 12 A. Not completely, no.
 13 **Q. Do you agree or disagree that all ships are assessed**
 14 **a tonnage piloted charge based on GT ITC?**
 15 A. I know they have a tariff. I'm not 100 percent
 16 familiar with the tariff, though.
 17 **Q. Are you aware that TOTE -- or would you agree that**
 18 **TOTE is the only ship owner out of all of PSP's**
 19 **customers, including domestic tankers and foreign**
 20 **container ships alike, to object to paying pilotage**
 21 **based on GT ITC?**
 22 MR. BLOCK: Judge, Mr. Morrell hasn't
 23 surveyed all of PSP's customers to come up with his
 24 testimony, and it's not in his direct testimony
 25 either. This is way outside the scope.

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1 MR. BRICKENSTEIN: Your Honor, I'll
 2 represent to you that it was part of a stipulation
 3 filed by the parties in paragraph 10 on March 22nd.
 4 It's a stipulated fact.
 5 JUDGE HOWARD: I believe the question was
 6 whether the witness was aware of that. So I will
 7 allow the question. You might re --
 8 THE WITNESS: I'm not fully aware of all --
 9 who all the customers are. So I can't say that
 10 convincingly. I can't sit here and say, yes, I know,
 11 without -- beyond a reasonable doubt that's true or
 12 not. So I'm not -- I don't know.
 13 BY MR. BRICKENSTEIN:
 14 **Q. Okay. Wouldn't you agree that using the same metric**
 15 **to charge pilotage to all ships is critical to**
 16 **avoiding price discrimination and favoritism?**
 17 MR. BLOCK: Objection. Outside the scope.
 18 JUDGE HOWARD: I believe now -- now I'm
 19 going to agree with Mr. Block.
 20 BY MR. BRICKENSTEIN:
 21 **Q. Okay. Could we go ahead and pull up PE-1 at page 11,**
 22 **please.**
 23 **Mr. Morrell, in your testimony, you compared the**
 24 **size of the TOTE ships based on their TEU carrying**
 25 **capacity to container ships; correct?**

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1 A. I gave an approximate number, yes.
 2 **Q. Okay. Can you see the image there at the bottom of**
 3 **page 11 of Mr. Essex's testimony?**
 4 A. Mm-hmm.
 5 **Q. And do you see that that's a rendering of the size of**
 6 **the Midnight Sun. And the numbers are a little bit**
 7 **blurry, but it shows the GT ITC, the GRT, the length,**
 8 **the width. And it's compared against another Ro-Ro**
 9 **ship, the Myra Seaways?**
 10 A. I see that.
 11 **Q. Wouldn't you agree that in the interest of an**
 12 **apples-to-apples comparison, it's appropriate to**
 13 **compare TOTE's Ro-Ro ship to the dimensions of**
 14 **another Ro-Ro ship?**
 15 A. No.
 16 **Q. Okay. If the Myra Seaways pays pilotage based on its**
 17 **GT ITC and the Midnight Sun pays based on its GRT,**
 18 **which is roughly comparable, wouldn't you agree that**
 19 **two ships of very different sizes are paying very**
 20 **different pilotage rates?**
 21 MR. BLOCK: Objection. Outside of the
 22 scope. Lack of foundation.
 23 JUDGE HOWARD: I'm going to allow the
 24 question.
 25 THE WITNESS: I'm sorry. You're going to

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1 have to repeat the question. I'm not quite sure I
 2 understood exactly what you're trying to get at here.
 3 BY MR. BRICKENSTEIN:
 4 **Q. Sure.**
 5 **Do you think it's fair or reasonable that these**
 6 **two ships of very different sizes ought to pay the**
 7 **same tonnage charge for pilotage, which is the case**
 8 **under TOTE's proposal that it pay GRT while all other**
 9 **ships pay based on GT ITC?**
 10 A. I think the ships are completely different. So I
 11 don't think you can compare one against the other.
 12 That's a Ro-Ro ship and we're a trailer ship. So
 13 things are a -- the design, the structure, it's
 14 completely different. So it's hard for me to answer
 15 that question.
 16 **Q. Mr. Morrell, you've characterized the TOTE ships as**
 17 **being engaged exclusively in domestic commerce. But**
 18 **they do sail under registry from time to time; isn't**
 19 **that true?**
 20 A. Only to go to dry dock.
 21 **Q. And that's in British Columbia; correct?**
 22 A. Yeah. But it's a non-revenue voyage.
 23 **Q. Sure. But -- actually, that brings up an interesting**
 24 **point.**
 25 **When you are engaged in coastwise transits**

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1 **between Puget Sound and the port of Alaska, TOTE's**
 2 **not -- unlike ship sailing under registry, you're not**
 3 **required to carry a Puget Sound pilot; correct?**
 4 A. That's correct. We're not required.
 5 **Q. You're not subject to compulsory pilotage?**
 6 A. No.
 7 **Q. That's a voluntary choice that TOTE is making?**
 8 A. Yes.
 9 **Q. Okay. But that's not the case when you go to dry**
 10 **dock in British Columbia; right? In that instance,**
 11 **because you're sailing on a foreign voyage, you're**
 12 **required to take both a Puget Sound pilot as you exit**
 13 **the district and then a BC pilot when you enter that**
 14 **pilotage district; correct?**
 15 MR. BLOCK: Objection. Outside the scope.
 16 MR. BRICKENSTEIN: Your Honor, it's relevant
 17 to the rate shock issue. It demonstrates that TOTE
 18 is, in fact, paying pilotage based on GT ITC on a
 19 fairly regular basis.
 20 MR. BLOCK: The question is not relevance.
 21 It's whether it's within the scope of the direct.
 22 JUDGE HOWARD: The witness gave testimony
 23 about the propriety of the change in invoicing.
 24 So I'm going to allow the question.
 25 THE WITNESS: Well, I wouldn't say it's on a

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1 regular basis. We go to dry dock every three years.
 2 So -- and I'm not familiar -- we're not familiar with
 3 the navigable waterways like we are with Puget Sound.
 4 Also, some other circumstances that are relevant to,
 5 you know, going to our shipyard and coming out of a
 6 shipyard. So pilotage is probably a good idea at
 7 that time.
 8 BY MR. BRICKENSTEIN:
 9 **Q. Sure.**
 10 **Can we just go ahead and pull up Morrell 04X.**
 11 **And if we could just page through quickly and then**
 12 **return to the top. Go back to the top.**
 13 **Mr. Morrell, would you agree that these are**
 14 **invoices issued to TOTE by the Pacific Pilotage**
 15 **Authority, the BC Pilots, BC Coast Pilots?**
 16 A. Yes.
 17 MR. BLOCK: Objection. Lack of foundation.
 18 Beyond the scope.
 19 MR. BRICKENSTEIN: Your Honor, it's an
 20 exhibit that goes to the same issues we've been
 21 discussing.
 22 JUDGE HOWARD: This exhibit has been
 23 admitted and I've already allowed questioning on this
 24 topic.
 25 I'm going to allow the question.

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1 MR. BRICKENSTEIN: And, Mr. Crandall, could
 2 you just highlight this row where it says length,
 3 beam, max beam, deepest draft.
 4 Can you see that, Mr. Morrell?
 5 A. Mm-hmm.
 6 **Q. And if you look at the fifth column over, it's**
 7 **labeled GRT, but that's not really accurate because**
 8 **that 65,314 number there, that's the TOTE ships**
 9 **international tonnage.**
 10 **That's the GT ITC; correct?**
 11 A. It appears to be.
 12 **Q. Okay. So in other words, when TOTE ships hire BC**
 13 **Coast pilots, they pay pilotage based on the TOTE**
 14 **ships GT ITC?**
 15 A. It appears that way.
 16 MR. BRICKENSTEIN: I have no further
 17 questions for this witness.
 18 MR. BLOCK: So that --
 19 JUDGE HOWARD: Any redirect?
 20 MR. BLOCK: I have a little redirect, Your
 21 Honor.
 22 REDIRECT EXAMINATION
 23 BY MR. BLOCK:
 24 **Q. First of all, in those voyages to British Columbia,**
 25 **Mr. Morrell, those are international voyages, are**

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1 they not?
 2 A. Yes, they are.
 3 **Q. So would that impact whether or not the international**
 4 **rate should be applied in that instance as compared**
 5 **to domestic voyages, which are the subject of TOTE's**
 6 **intervention in this GRC?**
 7 A. I believe so.
 8 **Q. Does TOTE feel it has a right to engage PSP pilots**
 9 **even though it does so voluntarily?**
 10 A. Do we -- I'm sorry. I don't -- I'm not sure I
 11 understand.
 12 **Q. You explained to Mr. Brickenstein that TOTE isn't**
 13 **under an obligation to use PSP pilots, but it does so**
 14 **voluntarily; right?**
 15 A. Correct. Yes.
 16 **Q. All right. But does TOTE understand that it has a**
 17 **right to use PSP's pilots if it wants to?**
 18 A. We -- yeah. We can use them if we want to. We also
 19 have some masters that have their federal pilot
 20 license for Puget Sound. But we choose to -- we've
 21 been using Puget Sound Pilot for over 45 years. And
 22 so we continue to use them. But we know we have
 23 options.
 24 **Q. Okay. Mr. Morrell, did you do any research or were**
 25 **you asked to give any opinion as to about what -- how**

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1 to -- charges PSP were charging for vessels other
 2 than TOTE's?
 3 A. No.
 4 **Q. Did you do any research about that to determine, you**
 5 **know, information that might go into testimony**
 6 **related to that topic?**
 7 A. Well, I took a look at the spreadsheet, the data
 8 sheet they had. And I noticed that they had the
 9 normal, 35,000 gross, the domestic tonnage, and the
 10 calculation in the spreadsheet. And that was as per
 11 our normal understanding with Puget Sound Pilots. So
 12 there was no further review or research for me to do
 13 because the number was consistent with what we've
 14 been paying for 20 years for these vessels.
 15 **Q. Okay. Okay. I'd like to revisit one of the earlier**
 16 **questions you were asked.**
 17 **Tonnage, when it is used as a metric to determine**
 18 **the size of a vessel for purposes of calculating**
 19 **pilottage charges, is at heart of the -- of TOTE's**
 20 **position here.**
 21 **Wouldn't you agree?**
 22 A. Yes.
 23 **Q. Okay. What is tonnage a measurement of, be it under**
 24 **the international standard or the domestic standard?**
 25 A. It's a cubic measurement of volume -- volumetric.

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1 **Q. Would it be fair to say it's cargo carrying capacity?**
 2 A. No.
 3 MR. BLOCK: Okay. All right. I have no
 4 further questions. Thank you.
 5 JUDGE HOWARD: All right. Do we have any
 6 questions from the bench for this witness?
 7 CHAIR DANNER: I have no questions, Your
 8 Honor.
 9 COMMISSIONER DOUMIT: No, Your Honor. Thank
 10 you.
 11 COMMISSIONER RENDAHL: I have none.
 12 JUDGE HOWARD: Hearing none, Mr. Morrell,
 13 thank you for your testimony. You are excused from
 14 the remainder of the hearing.
 15 THE WITNESS: Okay.
 16 JUDGE HOWARD: I believe right now it is
 17 2:49. It would be a good time to take maybe a
 18 ten-minute break and rejoin at 3 p.m., and we will
 19 resume with Captain Lofffield from TOTE. All right.
 20 We are off the record.
 21 (A break was taken from
 22 2:49 p.m. to 3:02 p.m.)
 23 JUDGE HOWARD: Let's be back on the record.
 24 Our next witness is Captain Eric Lofffield.
 25 Captain Lofffield, could you please raise your right

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1 hand and I'll swear you in.
 2 * * * * *
 3 Captain Eric Lofffield, having been first duly
 4 sworn, was examined
 5 and testified as
 6 follows:
 7 THE WITNESS: I do.
 8 JUDGE HOWARD: All right. Thank you.
 9 Mr. Block, would you please introduce the
 10 witness.
 11 MR. BLOCK: Thank you, Your Honor. Yes.
 12 Captain Lofffield, would you please state your
 13 full name for us?
 14 THE WITNESS: Eric Bradford Lofffield.
 15 MR. BLOCK: Okay. And where are you
 16 employed?
 17 THE WITNESS: I am employed through Topsail,
 18 Incorporated, which is a corporation I formed for
 19 piloting purposes. And it's located in Anchorage,
 20 Alaska. And I am subcontracted to TOTE, and I do
 21 their pilotage -- pilotage in Alaska.
 22 MR. BLOCK: Okay. Thank you.
 23 Did you submit written testimony that -- for
 24 purposes of this proceeding?
 25 THE WITNESS: I did.
 MR. BLOCK: And is everything in that

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1 testimony true and correct to the best of your
 2 knowledge?
 3 THE WITNESS: Yes.
 4 MR. BLOCK: Okay. Thank you.
 5 I tender the witness to PSP for
 6 cross-examination.
 7 JUDGE HOWARD: All right. Thank you. And
 8 PSP, you may proceed.
 9 MR. BRICKENSTEIN: Thank you, Your Honor.
 10 CROSS-EXAMINATION
 11 BY MR. BRICKENSTEIN:
 12 **Q. Captain Lofffield, you state that the purpose of your**
 13 **testimony is to compare the risk and burden of**
 14 **piloting TOTE ships to -- I'm quoting page 1 of your**
 15 **testimony -- "vessels for which Puget Sound Pilots**
 16 **typically provide pilotage services."**
 17 **Is that a fair characterization of the purpose of**
 18 **your testimony?**
 19 A. Yes.
 20 **Q. And you'd agree, wouldn't you, that Puget Sound**
 21 **Pilots provide pilotage services to hundreds, if not**
 22 **thousands, of different vessels per year; is that**
 23 **true?**
 24 A. I don't know the number, but it's probably between
 25 100 and a thousand, yes.

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1 **Q. Okay. Can we pull back up IC-15, please.**
 2 **And you would agree, while Mr. Crandall's pulling**
 3 **that up, Captain Lofffield, that the ships that PSP**
 4 **pilots, they're a range of different types of**
 5 **vessels, from yachts to bulkers to container ships,**
 6 **passenger vessels, Ro-Ros, et cetera; right?**
 7 A. That's correct.
 8 **Q. Okay. And wouldn't you also agree that these ships**
 9 **vary widely in terms of their size, their**
 10 **configurations, their handling characteristics that**
 11 **are unique to each ship?**
 12 A. Certainly.
 13 MR. BLOCK: Objection, Your Honor. This is
 14 getting into, again, lack of foundation. And beyond
 15 the scope of Captain Lofffield's testimony.
 16 MR. BRICKENSTEIN: Your Honor, the subject
 17 of his testimony is the claim that the TOTE ships
 18 ought to be comparable to a, quote/unquote, "typical
 19 vessel" that PSP pilots. And the purpose of this
 20 line of questioning is to establish that that's an
 21 artificial construct.
 22 JUDGE HOWARD: I'm going to allow the
 23 question.
 24 MR. BRICKENSTEIN: Thank you.
 25 BY MR. BRICKENSTEIN:

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1 **Q. Captain Lofffield, I'll just re-ask it.**
 2 **Wouldn't you agree that these ships vary widely**
 3 **in terms of their size, configurations, and handling**
 4 **characteristics that are unique to each ship?**
 5 A. Yes.
 6 **Q. Okay. So wouldn't you acknowledge, then, that making**
 7 **generalized comparisons between TOTE ships and a**
 8 **hypothetical, quote/unquote, "typical vessel" is not**
 9 **really a valid exercise?**
 10 A. No, I wouldn't. I would say that I could compare the
 11 vessel that I work on, the Orca class vessel, to any
 12 other vessel that you have.
 13 **Q. Right. But you've attempted to draw comparisons, and**
 14 **you've said that the TOTE ships ought to be charged**
 15 **pilotage -- ought to be the only ships charged**
 16 **pilotage based on their GRT on grounds that they're**
 17 **better handling and less risky than a, quote/unquote,**
 18 **"typical vessel."**
 19 **But what does that mean? A container ship --**
 20 **1,200-foot container ship or a 200-foot yacht; right?**
 21 A. The Orca class vessels are head and shoulders above
 22 almost all other vessels in their handling
 23 characteristics.
 24 **Q. We'll talk about that in another moment.**
 25 **But you state in your testimony that you've been**

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1 **piloting TOTE ships into and out of the port of**
 2 **Alaska since 1998. Is that when you joined TOTE**
 3 **through your -- through your own company?**
 4 A. That would be correct.
 5 **Q. Okay. Actually, let me -- let me break for just a**
 6 **second before I continue with that line of**
 7 **questioning.**
 8 **As a -- you have a federal pilot's license;**
 9 **correct?**
 10 A. Yes.
 11 **Q. Do you hold any state pilot's license?**
 12 A. No.
 13 **Q. Okay. So just to be clear, as a matter of law,**
 14 **Captain Lofffield, you're not permitted to pilot any**
 15 **foreign flag vessels; is that true?**
 16 A. That's -- I am not permitted to pilot, is that what
 17 you're saying?
 18 **Q. That's exactly what I'm asking.**
 19 A. Okay. I mean, my license is for more than just
 20 piloting. My license would allow me to be a ship's
 21 master on a foreign flag vessel. But a vessel that
 22 was required --
 23 **Q. No, it would not.**
 24 A. A vessel -- a vessel that was required to have a
 25 state pilot by law would have to have a state pilot,

1 not a federal pilot only.
 2 **Q. Right. And that's pilotage -- the reason state**
 3 **pilot's licenses are required is because there are**
 4 **certain skills and training and education that goes**
 5 **into obtaining a state pilot's license that you don't**
 6 **have just simply by having a master's license; right?**
 7 A. No. I have all the skills that a state pilot has. I
 8 do not have the state license because I have not sat
 9 for the state exam.
 10 **Q. Okay. So in the 25 years since 1998 that you've been**
 11 **with TOTE, has that been -- has your employment**
 12 **exclusively been with TOTE?**
 13 A. As a pilot, I've exclusively worked for TOTE. Yes.
 14 **Q. Okay. So fair to say, then, for the past 25 years,**
 15 **quarter century, you have not piloted any ship other**
 16 **than TOTE ships; is that true?**
 17 A. Any large commercial ships. I have only piloted the
 18 TOTE ships.
 19 **Q. Okay.**
 20 A. Yeah.
 21 **Q. You've never held a Washington State pilot's license;**
 22 **right?**
 23 A. No.
 24 **Q. You've never been a member of the Puget Sound Pilots;**
 25 **right?**

1 JUDGE HOWARD: I'm sorry. I just -- I feel
 2 like there is someone who needs to mute their line.
 3 Ryan or Courtney, could you look into people who need
 4 to be muted, please? Sorry about that,
 5 Mr. Brickenstein. Please proceed.
 6 MR. BRICKENSTEIN: No. Thank you, Your
 7 Honor. I appreciate that.
 8 BY MR. BRICKENSTEIN:
 9 **Q. I just want to confirm, Captain Loftfield, because**
 10 **while I appreciate your answer, it wasn't really**
 11 **directed at my question.**
 12 **The subject matter of your testimony is the**
 13 **supposed comparability between the TOTE ships and**
 14 **various ships that PSP pilots.**
 15 **And what I'm saying is -- and I'm asking if**
 16 **you're agreeing with me, that over the past quarter**
 17 **century, you don't have experience piloting any ship**
 18 **other than TOTE ships and therefore can't make a**
 19 **comparison to any vessel, let alone the,**
 20 **quote/unquote, "typical vessel" that Puget Sound**
 21 **Pilots are piloting on a day-to-day basis.**
 22 **Isn't that true?**
 23 A. No, it's not true. It is true that I have not
 24 piloted any other ships. However -- in the last
 25 25 years. However, I have come in and out of Puget

1 A. No.
 2 **Q. So wouldn't you acknowledge that, apart from the TOTE**
 3 **ships, you have no personal knowledge of the**
 4 **individual ships or their characteristics that PSP**
 5 **pilots on a day-to-day basis?**
 6 A. Every ship that I've been master of I've had to
 7 supervise whatever pilot, be it a state pilot, a
 8 federal pilot, a pilot in a foreign country. I have
 9 the ultimate responsibility as the ship's master, and
 10 I have to supervise and keep a really close eye on
 11 what the pilots are doing and take the ship away from
 12 them, if necessary.
 13 So I have plenty of experience on the pilotage
 14 where I was the person responsible in a large
 15 assortment of vessels and a large assortment of ports
 16 and places around the world.
 17 **Q. Thank you, Captain Loftfield. And I appreciate that.**
 18 **But it is a little bit different from what I was**
 19 **asking.**
 20 **What I'm saying is, for the past quarter century,**
 21 **you've only been aboard the TOTE ships. So you don't**
 22 **really have any knowledge of what ships PSP is**
 23 **piloting -- specific ships PSP is piloting on a**
 24 **day-to-day basis, let alone --**
 25 MR. BRICKENSTEIN: Your Honor, were you...

1 Sound on a regular basis. I have been up on the
 2 bridge and seen the Puget Sound piloting that they're
 3 doing. I know all of the types of traffic that come
 4 in and out. I talk to a lot of the pilots. I also
 5 know a lot about -- as the ship's master, I've been
 6 in and out of Puget Sound. And the fact is that
 7 other than the part of the statement where you say I
 8 have not piloted any other ship, the rest of it I
 9 have to disagree with.
 10 **Q. Okay. Thank you. When you -- I want to ask you a**
 11 **quick question about the port of Alaska, which is**
 12 **where you pilot the TOTE ships; correct?**
 13 A. That would be the Port of Anchorage. That is not the
 14 port of Alaska.
 15 **Q. Thanks for the clarification.**
 16 **When you --**
 17 A. There are many ports in Alaska.
 18 **Q. Okay. And when you approach the Port of Anchorage**
 19 **aboard the TOTE ships, are you traveling forward or**
 20 **backwards, bow first or stern first?**
 21 A. Well, for the most part, we're trying to come in
 22 going forward. But because there is such great tide
 23 and so much current in the port of Alaska, that
 24 would -- that means we always have to face into the
 25 way the current is coming. And we can only dock one

1 side up there.
 2 **Q. Right.**
 3 A. We do have to go -- we do have to use astern as we're
 4 approaching the dock.
 5 **Q. You do approach the dock astern?**
 6 A. Astern through the water. In other words, the fact
 7 is that we're backing into a current. We can be. We
 8 try to avoid it because it -- you know, we'd like to
 9 avoid it, but we can't always avoid it.
 10 **Q. You're aware that when the TOTE ships come into port**
 11 **in Puget Sound, they -- they dock in the Blair**
 12 **Waterway and that Puget Sound pilots have to navigate**
 13 **the ships traveling astern for approximately one**
 14 **mile; correct?**
 15 A. That's correct. Although I don't think it's
 16 mostly -- I think it's mostly less than a mile. But
 17 anyway, it doesn't really matter. We back into the
 18 waterway. Yes.
 19 **Q. And there's no comparable transit or maneuver to that**
 20 **in the Port of Anchorage, is there? You're not**
 21 **traveling astern for a mile or close to a mile, are**
 22 **you?**
 23 A. If we're trying to back -- if we're trying to stem a
 24 current that's on the stern, we would be backing, and
 25 even though we wouldn't move over to ground, we would

1 **Q. Do you agree with him?**
 2 A. Of course I agree with him. They don't have bow
 3 thrusters. The decision was made when the ships were
 4 built to -- to not put bow thrusters in, in part
 5 because of how hard they are to maintain and keep
 6 reliable. And that it's safer to go with the tugs
 7 than to try to trust a bow thruster in a -- in a
 8 tricky situation.
 9 **Q. Captain Lofffield, it's true, isn't it, that pilots,**
 10 **when you're piloting a ship, you're piloting the**
 11 **entire ship above and below the waterline, not just**
 12 **the cargo carrying spaces; right?**
 13 A. Yes.
 14 **Q. And during your career, you've -- you've sailed both**
 15 **domestically and on international commercial voyages;**
 16 **true?**
 17 A. Yes.
 18 **Q. Now, at the risk of maybe stating the obvious -- but**
 19 **I bring it up because TOTE's raised it as an issue.**
 20 **A vessel's physical size doesn't change depending on**
 21 **whether it's sailing on a domestic or a foreign**
 22 **voyage, does it?**
 23 A. No.
 24 **Q. Okay. And similarly, a vessel's risk profile, its**
 25 **maneuverability or the difficulty of piloting a**

1 be moving through the water. And it could be --
 2 depending on the strength of the current, it could be
 3 a mile through the water. Yeah.
 4 **Q. Okay. So based on your experience doing that, I**
 5 **mean, wouldn't you agree with Captain Klapperich that**
 6 **having a bow thruster would be a critical aid to**
 7 **maneuverability while traveling astern?**
 8 A. Yes and no. And the reason I say that is because a
 9 tug can do whatever the bow thruster can do. And the
 10 ships I've had with bow thrusters, the bow thruster
 11 doesn't always respond when you want it. And in that
 12 case, you're going to have to get ahold of a tug
 13 anyway. So although the bow thruster would make
 14 things easier, the dependability of bow thrusters,
 15 particularly in the waters up in Cook Inlet where
 16 it's really silty and there's ice for a large part of
 17 the year, the bow thruster would not be effective as
 18 a tug. A tug would be a much more effective tool.
 19 **Q. How about in Puget Sound? I mean, a bow thruster is**
 20 **very helpful to Puget Sound pilots navigating astern**
 21 **in constricted waterways, isn't it?**
 22 A. It is. If it's working properly.
 23 **Q. And I think Captain Klapperich testified to this.**
 24 **But the TOTE ships don't have bow thrusters, do they?**
 25 A. He testified to that, yes.

1 **particular vessel, none of that's determined based on**
 2 **whether the voyage is domestic or international, is**
 3 **it?**
 4 A. No.
 5 **Q. Okay. So I want you to assume for me, for the**
 6 **moment, that pilotage rates, or at least the tonnage**
 7 **component, is a function of the vessel's size as a**
 8 **proxy for the difficulty and risk of piloting a**
 9 **particular ship.**
 10 **Wouldn't you agree that reducing rates to a ship,**
 11 **pilotage rates to a ship just because it's sailing on**
 12 **a domestic rather than foreign voyage is**
 13 **discriminatory?**
 14 MR. BLOCK: Object. That's outside of his
 15 scope. Lack of foundation.
 16 JUDGE HOWARD: I will grant the objection
 17 because I don't believe that tariff design and issues
 18 along those lines were a part of Captain Lofffield's
 19 testimony.
 20 MR. BRICKENSTEIN: Thank you, Your Honor.
 21 And I don't have any further questions.
 22 JUDGE HOWARD: All right. Do we have any
 23 redirect?
 24 MR. BLOCK: Just -- I just wanted to clarify
 25 with a quick question on redirect.

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1 REDIRECT EXAMINATION
 2 BY MR. BLOCK:
 3 **Q. Captain Lofffield, you described your experience**
 4 **coming -- on frequent voyages coming into and out of**
 5 **the Puget Sound region on a variety of vessels.**
 6 **Did you mean to say that those were on a variety**
 7 **of vessels, some of which might be owned by TOTE and**
 8 **some of which -- in fact, many of which, were not**
 9 **owned by TOTE?**
 10 A. Other than the TOTE vessels, I have been in and out
 11 of Puget Sound a fair number of times. And they --
 12 you know, on non-TOTE vessels, yeah.
 13 **Q. "A fair number of times," meaning that you have**
 14 **experience on non-Ro-Ro vessels, some of which --**
 15 A. Right.
 16 **Q. -- owned by TOTE, some of which not?**
 17 A. Yeah.
 18 **Q. On many occasions throughout your career?**
 19 A. Well, not as frequently as I've been in and out on
 20 TOTE vessels. I mean, probably over 90 percent of my
 21 trips in and out of Puget Sound have been on TOTE
 22 vessels.
 23 MR. BLOCK: All right. Thank you.
 24 THE WITNESS: Yeah.
 25 JUDGE HOWARD: All right. Do we have any

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1 questions from the bench for this witness?
 2 COMMISSIONER RENDAHL: No, Your Honor.
 3 COMMISSIONER DOUMIT: No, Your Honor. Thank
 4 you.
 5 CHAIR DANNER: No, Your Honor. Thank you.
 6 JUDGE HOWARD: All right.
 7 Captain Lofffield, thank you for your
 8 testimony. You are excused.
 9 THE WITNESS: Thank you.
 10 JUDGE HOWARD: Our next witness on the order
 11 of presentation would be Sean McCarthy. But I
 12 believe we conferred about this and McCarthy is only
 13 available tomorrow, not today.
 14 So we would be proceeding next with
 15 Mitchell Stoller.
 16 MR. HAGLUND: That's right.
 17 Mitchell, do you want to move to the witness
 18 chair?
 19 JUDGE HOWARD: All right. Mr. Stoller, if
 20 you could please raise your right hand and I'll swear
 21 you in.
 22 * * * * *
 23 Captain Mitchell Stoller, having been first duly
 24 sworn, was examined and
 25 testified as follows:
 THE WITNESS: Yes.

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1 JUDGE HOWARD: All right. Thank you.
 2 Mr. Haglund, would you please introduce the
 3 witness.
 4 MR. HAGLUND: Yes.
 5 Captain Stoller, could you briefly describe
 6 your maritime experience?
 7 THE WITNESS: Yes. I'm Captain
 8 Mitchell Stoller. I work for the maritime academy.
 9 I graduated valedictorian 1975. At 20 years old, I
 10 got a third mate's unlimited license, went to work
 11 for Exxon Shipping Company U.S.A. I was there
 12 approximately two years. Became a second mate --
 13 second mate, at 22 years old. Got one year of sea
 14 time. Became the youngest chief mate in modern
 15 history at 24 years old.
 16 So from 24 years old, as a chief mate, to then
 17 I was appointed permanent master and sailed as a
 18 master at 29 years old. Youngest captain at Exxon
 19 since World War II. I was there until I was
 20 approximately 32, 33 years old. Became an LA Harbor
 21 pilot approximately two and a half years.
 22 After that, I've been a maritime consultant for
 23 shipping companies. I've written safety manuals for
 24 Arco Marine, West Coast Shipping, State of Washington
 25 procedures. I've been on three separate boards

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1 approved through the White House, the Navigation
 2 Safety Advisory Council appointed by Federico Peña.
 3 Twice I was on the Towing Safety Advisory Council,
 4 appointed by two separate directors of Homeland
 5 Security. I've done many separate safety projects
 6 around my curriculum vitae.
 7 MR. HAGLUND: Did you prepare both original
 8 testimony and rebuttal testimony in this rate
 9 proceeding?
 10 THE WITNESS: Yes.
 11 MR. HAGLUND: Is it true and accurate to the
 12 best of your knowledge?
 13 THE WITNESS: Yes, sir.
 14 MR. HAGLUND: I tender the witness for
 15 cross-examination.
 16 JUDGE HOWARD: All right. Thank you.
 17 PMSA, you may proceed.
 18 MS. DeLAPPE: Thank you, Your Honor.
 19 CROSS-EXAMINATION
 20 BY MS. DeLAPPE:
 21 **Q. Good afternoon, Captain Stoller.**
 22 A. Good afternoon.
 23 **Q. Could you please turn to your testimony,**
 24 **Exhibit MSS-01T, and specifically to page 6.**
 25 **While you're doing that, just as a general**

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1 matter, you testified on vessel risks in the pilotage
 2 space?
 3 A. Oh, yes. I've done risk assessment cases for
 4 approximately 30 years. I've been a guest speaker at
 5 the --
 6 **Q. Mr. Stoller, that's a little beyond what I was**
 7 **asking, and I do have very limited time with you**
 8 **today.**
 9 A. I thought you wanted my background in risk
 10 assessment.
 11 **Q. That is not -- no. So try to listen carefully to the**
 12 **question, please.**
 13 **If you look on page 6 at line 3, you pointed to a**
 14 **2020 report by The International Group of P&I Clubs**
 15 **as, quote, one of the most significant reports**
 16 **addressing this topic; correct?**
 17 A. Yes.
 18 **Q. And if you look a little further down to line 16, you**
 19 **testified that the report found that there were 1,046**
 20 **incidents that resulted in liabilities in excess of**
 21 **1.82 billion during 20 years; correct?**
 22 A. Yes.
 23 **Q. What makes this report so significant? If I could**
 24 **just have a brief answer on that.**
 25 A. It's significant, with the advent of larger ships and

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1 all this equipment on board, that incidents still
 2 happen and they're growing.
 3 **Q. Does this report also have credibility because the**
 4 **P&I club sources are reliable sources for this type**
 5 **of data?**
 6 A. It has credibility for what's in the report.
 7 **Q. Thank you. If you could turn to the report itself,**
 8 **Exhibit MSS-03, and I would ask you to turn to**
 9 **page 5. And you'll see on that page Table 1.**
 10 A. Okay.
 11 **Q. Are you there?**
 12 A. Yes.
 13 **Q. Great.**
 14 **So this table shows the cost of vessel incidents**
 15 **that P&I clubs covered from 1999 to -- through 2018;**
 16 **right?**
 17 A. Yes.
 18 **Q. Do you see in this table that the single incident**
 19 **with the highest cost of vessels worldwide was over**
 20 **\$300 million in 2007?**
 21 **Let me amend my answer slightly.**
 22 **In 2007, you see that the total cost was 300**
 23 **million, a little over 300 million. And you happen**
 24 **to know that that is a single incident that occurred**
 25 **in 2007?**

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1 A. Yes.
 2 **Q. Okay. The P&I clubs cover the claims arising from**
 3 **all of these incidents; correct?**
 4 A. They cover the claims? How do you want me --
 5 **Q. Isn't that why it's in the report, these are costs**
 6 **that they actually paid out?**
 7 A. I assume they did. I don't see that on that page, if
 8 they -- they were the ones that paid it out.
 9 **Q. And I'm just referring to this report, based on your**
 10 **own submission of it and your professed familiarity**
 11 **with this.**
 12 **But you're not sure that the P&I clubs actually**
 13 **reported paying these claims?**
 14 A. I believe they did.
 15 **Q. Thank you.**
 16 **Let's turn to page 15 of the report.**
 17 **I should say page 15 of the exhibit. It's**
 18 **actually page 29 of the report that I'm looking at.**
 19 **So it's on the right-hand side.**
 20 **And do you see there that it says, the title of**
 21 **the page, "Incidents by Country and Port"?**
 22 A. Yes.
 23 **Q. I direct you to look at Table 8, "Incidents by Port."**
 24 **Puget Sound is not on the list; correct?**
 25 A. I believe that's correct.

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1 **Q. Would you agree that that is because Puget Sound has**
 2 **had fewer than three significant incidents in the**
 3 **last 20 years?**
 4 A. 20 years from now? From today?
 5 **Q. Excuse me. This report -- Captain Stoller, this**
 6 **report covers 20 years, as stated in your own**
 7 **testimony; correct?**
 8 A. Yes.
 9 **Q. Thank you. And so that means that the Puget Sound**
 10 **has had fewer than three significant incidents in the**
 11 **20 years covered by this report; correct?**
 12 A. Correct.
 13 **Q. Okay. Do you see on the "Incidents by Port," New**
 14 **Orleans?**
 15 A. If you can point it out, please.
 16 **Q. It's about -- its No. 4 down on the "Incidents by**
 17 **Port" table. It's the fourth one down.**
 18 A. Thank you. I see that. Yes.
 19 **Q. Okay. And that's because it had 20 incidents?**
 20 A. Yes.
 21 **Q. And do you see, also, Mississippi River is high on**
 22 **the list, just a few -- farther down, with 11**
 23 **incidents?**
 24 A. Yes.
 25 **Q. Now, according to other witnesses in this case, many**

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1 of the highest paid pilots in the country are in New
 2 Orleans and on the Mississippi River.
 3 Are you able to conclude anything from this table
 4 that would establish correlation between pilot pay
 5 and the number of incidents in any specific pilotage
 6 ground?
 7 A. The correlation between pay and incidents, no.
 8 MS. DeLAPPE: Thank you. I have no further
 9 questions.
 10 REDIRECT EXAMINATION
 11 BY MR. HAGLUND:
 12 Q. So staying with this International Group of P&I Clubs
 13 report, could we return to page 5. And if you could,
 14 blow up Table 1.
 15 Captain Stoller, if you look at the year that
 16 Ms. DeLappe was questioning you about, which is 2007,
 17 there's a -- the second column shows number of
 18 incidents.
 19 And what's the -- what is the number in that
 20 column?
 21 A. 57.
 22 Q. It's not number -- it's not one; correct?
 23 A. Correct.
 24 Q. And do they -- does this table use the total cost and
 25 the number of incidents to derive an average cost per

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1 incident in each year?
 2 A. Yes.
 3 Q. And in 2007, what was the average cost per incident
 4 among the 57 that made up over \$300 million?
 5 A. Over \$5 million.
 6 Q. Okay. Now, is it fair to say that during your career
 7 you sailed as a captain into ports on all coasts of
 8 the United States, West Coast, Gulf Coast, East
 9 Coast?
 10 A. Yes.
 11 Q. And could you -- you were asked questions about this
 12 report that you contend shows that the risks of
 13 pilotage are persistent and growing. And I would
 14 like to ask you some follow-up questions related to
 15 that.
 16 What would you -- how would you describe, based
 17 on your experience as a pilot, the list of factors
 18 that create potential risk during a pilotage
 19 assignment?
 20 A. May I articulate what they are?
 21 Q. Sure. That's my question.
 22 A. You have several. You have vessels not following the
 23 rules of the road. You have larger ships. Channels
 24 are not getting wider. Ships are deeper; less
 25 under-keel clearance. You have ships -- basically

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1 less room to navigate, less time to react to an
 2 error. You have personal watercraft in the
 3 waterways. You have fishing vessels in the channels.
 4 You have fatigue of the crew. You have helms that
 5 may oversteer, you have helms that may be a poor
 6 steerer. You have the helms that may miss an order.
 7 You have engines and bells that might not be executed
 8 properly. You can have engine failure. You can have
 9 rudder failure. You can have rudders that are
 10 sluggish, radar failure, a variable pitch propeller
 11 go out, gyro error, rate of turn indicator not
 12 working, sail effect of the vessel, anchor let go
 13 underway, microclimates, hail storm, wind gusts,
 14 sudden squall, fog, tides, currents, total electrical
 15 failure of the vessel, out failure going out,
 16 possible fire in the vessel, human error.
 17 Q. So just to make sure the record is clear, when you
 18 use the term "sail effect," what does that refer to?
 19 A. Sail effect is the wind on the side shell of the
 20 ship, which is the distance from the water up the
 21 surface to the side of the vessel, and affects the
 22 vessel.
 23 Q. And the larger the ship, the greater the sail effect?
 24 A. Yes. It would be the exposure to the hull.
 25 And also, I may not have said that, when I was a

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1 pilot, the ships may be 8-, 900-foot-long container
 2 ships. Now they're 12-, 1300. The rudders are not
 3 getting bigger. The propeller's not getting bigger.
 4 So the water going through the thrusts of the
 5 propeller, they're harder to handle.
 6 Q. So as the rudders on these larger ships have gotten
 7 smaller, it reduces their maneuverability?
 8 A. Effectiveness of the vessel. And since you have a
 9 larger vessel and you have a vessel coming into a
 10 dock with one vessel on each side of other docks, you
 11 have a narrowness of the water you can use for that
 12 vessel. So you have less time to react to any one of
 13 these things that can go wrong in the human error
 14 chain. The vessel can get out of the channel. A
 15 vessel gets out of the channel, the Army Corp of
 16 Engineers doesn't guarantee what's outside the
 17 channel as far as depth and existence of rocks or
 18 anchors.
 19 MS. DeLAPPE: Judge Howard, I hesitate to
 20 interrupt anybody. But I'm really struggling to see
 21 how this is within the scope of my cross-examination
 22 topics. At all.
 23 JUDGE HOWARD: I am going to agree with --
 24 with that objection. I believe that the cross was
 25 focused on more of the incident reporting and the P&I

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1 club report rather than the mechanics.
 2 MR. HAGLUND: Understood, Your Honor. I'll
 3 conclude. No further questions.
 4 JUDGE HOWARD: All right. Thank you.
 5 Do we have any questions from the bench for
 6 this witness?
 7 CHAIR DANNER: No, Your Honor.
 8 COMMISSIONER RENDAHL: No, Your Honor.
 9 JUDGE HOWARD: Captain Stoller, thank you
 10 for your testimony. You are excused.
 11 Our next witness is Captain Carlson.
 12 All right. Captain Carlson, if you would
 13 please raise your right hand, I'll swear you in.
 14 *****
 15 Captain Ivan Carlson, having been first duly sworn,
 was examined and testified as
 16 follows:
 17 THE WITNESS: I do.
 18 JUDGE HOWARD: All right. Thank you.
 19 Mr. Haglund, would you please introduce the
 20 witness.
 21 MR. HAGLUND: Captain Carlson, what's your
 22 position with Puget Sound Pilots?
 23 THE WITNESS: I'm the president of Puget
 24 Sound Pilots at this time.
 25 MR. HAGLUND: And how long have you been

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1 licensed?
 2 THE WITNESS: 17 years, about.
 3 MR. HAGLUND: Did you prepare original and
 4 rebuttal testimony in this rate case?
 5 THE WITNESS: I did.
 6 MR. HAGLUND: Is it true and accurate to the
 7 best of your knowledge?
 8 THE WITNESS: Yes.
 9 MR. HAGLUND: I tender the witness for
 10 cross.
 11 JUDGE HOWARD: All right. Ms. DeLappe, you
 12 may proceed.
 13 CROSS-EXAMINATION
 14 BY MS. DeLAPPE:
 15 **Q. And if I could just ask, Captain Carlson, that you**
 16 **speak up a little bit. I saw that the court reporter**
 17 **was struggling a little.**
 18 **Good afternoon.**
 19 A. Hello.
 20 **Q. I'd like to start by picking up where we left off**
 21 **from the prior rate case.**
 22 **So if you could please turn to Exhibit WTB-18X,**
 23 **which is the final order in the prior rate case.**
 24 A. Order 09?
 25 **Q. Yes. Order 09.**

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1 A. Okay. What page?
 2 **Q. It's WTB-18X and the page number is 65. And**
 3 **specifically, I would like to look at paragraph 200,**
 4 **where you will see a summary of some of your**
 5 **testimony that you gave to the Commission in 2019.**
 6 **Let me know when you're there, please.**
 7 A. I'm there.
 8 **Q. Okay. I'm just going to quote right now.**
 9 **"Additionally, Captain Carlson argues that the**
 10 **mandatory rest period exacerbates the demand for**
 11 **callbacks and results in increased cumulative pilot**
 12 **fatigue from ongoing interruptions of respite time."**
 13 **"Captain Carlson asserts that accepting"**
 14 **callbacks -- "accepting a callback assignment will**
 15 **disrupt a pilot's off-duty time by nearly two days**
 16 **due to factors such as proper rest prior to accepting**
 17 **the assignment, average assignment time, and the**
 18 **mandatory ten-hour rest period after the assignment**
 19 **is completed."**
 20 **And if you can turn back now to page 18 in the**
 21 **same document, paragraph 47. And I'll just say it**
 22 **says that "The act," referring to the pilotage act,**
 23 **"also provides for mandatory rest periods for**
 24 **pilots." And it describes some of those rules.**
 25 **And if you see at the bottom of page 18, the**

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1 **footnotes, 65 through 67 for that paragraph, that**
 2 **cites a statute, RCW 88-16-103.**
 3 **So finally the question.**
 4 **You are familiar with this statute, aren't you?**
 5 A. Yes.
 6 **Q. And it was adopted in 2019?**
 7 A. Yes.
 8 **Q. Could you please now turn to Exhibit IC-26X. And**
 9 **those are slides -- the title of the slides is**
 10 **"Presentation in Support of WAC 363-116-065"?**
 11 A. Yes.
 12 **Q. And that's a presentation that PSP made to the BPC in**
 13 **July of 2019; correct?**
 14 A. Yes.
 15 **Q. And so if you can go to page 4 of the exhibit.**
 16 **And could you just confirm for me, PSP adopted an**
 17 **eight-hour rest rule and the three-and-out rest rule**
 18 **in 2015; correct?**
 19 A. Yes.
 20 **Q. Thank you.**
 21 **And on the next page, in 2018, the BPC adopted**
 22 **policies that are the same as what the legislature**
 23 **adopted in that statute in 2019; correct?**
 24 A. In 28 -- excuse me, what year are you saying the BPC
 25 adopted the policies that are in the statute?

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1 **Q. Do you -- do you see the first bullet point on**
 2 **page 5? It says "2018 BPC Policies" --**
 3 **A. Yes.**
 4 **Q. -- "2019 legislation"?**
 5 **A. Yes.**
 6 **Q. And then it has the ten-hour minimum rest rule, the**
 7 **13-hour limit on multiple harbor shifts, and the**
 8 **three-and-out rule; correct?**
 9 **A. Yes. This occurred in October, near the end of**
 10 **October in 2018.**
 11 **Q. In 2018. Thank you. Make sure not to drop your**
 12 **voice for the transcript. Thank you.**
 13 **Let's turn now then to Exhibit JR-06, please.**
 14 **And that is the BPC annual report for 2021.**
 15 **And if you can turn to page 8 of that exhibit.**
 16 **COMMISSIONER RENDAHL: Ms. DeLappe, could**
 17 **you tell me, JR, whose testimony is this, please?**
 18 **MS. DeLAPPE: Jordan Royer.**
 19 **COMMISSIONER RENDAHL: Okay. Thank you.**
 20 **MS. DeLAPPE: Thank you.**
 21 **BY MS. DeLAPPE:**
 22 **Q. And, Captain Carlson, are you there?**
 23 **A. Yes.**
 24 **Q. Thank you.**
 25 **So on page 8 of the 2021 BPC report, it provides**

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1 **a summary of regulations that were adopted during the**
 2 **year; right?**
 3 **A. Yes.**
 4 **Q. And one of those it describes is the new rule for WAC**
 5 **363-116-081. Quote, "This new rule codified that**
 6 **pilots have a mandatory rest period of at least ten**
 7 **hours, with the opportunity for eight hours of**
 8 **uninterrupted sleep, after the completion of an**
 9 **assignment. In addition, this rule defines multiple**
 10 **assignments within a harbor area and codifies and**
 11 **defines the existing practice of Puget Sound Pilots**
 12 **to receive a mandatory rest period after three**
 13 **consecutive night assignments." Right?**
 14 **A. Yes. But to clarify, it had an effective date of**
 15 **4/19 -- it was adopted, but with an effective date of**
 16 **4/19/21.**
 17 **Q. But you provided testimony to this Commission, the**
 18 **UTC, advising about these new rest rule factors in**
 19 **the prior rate case. And those were adopted in 2018**
 20 **and 2019; correct?**
 21 **A. I provided testimony -- the rest rules had changed,**
 22 **yes. And that there is a significant difference**
 23 **between the RCW and WAC in that -- in that how the**
 24 **rules were written around the RCW didn't take effect**
 25 **until April of 2019. This -- this impacted the**

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1 three-and-out and it impacted cancellations when
 2 those rules took effect in April of 2021.
 3 **Q. So the BPC annual report there says the new rule**
 4 **codified these rest rules.**
 5 **A. In April of 2021.**
 6 **Q. And those rest rules, as I've just discussed in your**
 7 **previous testimony a few minutes ago, there were some**
 8 **rest rules by PSP policy dating back to 2015,**
 9 **admittedly some -- not the same exact ones, right,**
 10 **but somewhat the same, somewhat similar; would you**
 11 **agree with me on that?**
 12 **A. Somewhat similar. Yes.**
 13 **Q. Okay. So by the time the BPC codified the statute in**
 14 **this rule, PSP had been implementing the safety rules**
 15 **in its operations for at least two years; right?**
 16 **A. With some differences.**
 17 **Q. Essentially similar, could we agree on that?**
 18 **A. Well, there were differences. I'm not sure we can or**
 19 **not. But we did have a three-and-out rule and we did**
 20 **have 13-hour multiple harbor shifts. And we did have**
 21 **a ten-hour rest period. We can agree on that.**
 22 **Q. Thank you. That's great.**
 23 **Let's look next at your testimony, if you can**
 24 **turn to your rebuttal testimony, Exhibit IC-08T. And**
 25 **specifically if you can turn to page 5.**

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1 **A. Okay.**
 2 **Q. If you can go down to line 18, your testimony here is**
 3 **about several factors that could have contributed to**
 4 **the noted increase in delays.**
 5 **And you're talking there about what period?**
 6 **A. 2021 versus 2019, which is a table that PMSA produced**
 7 **at the top of the page.**
 8 **Q. So right below that you say, I'll quote you, "I would**
 9 **also highlight significant regulation changes in WAC**
 10 **363-116-081 that occurred in early 2021. In 2021,**
 11 **rest rules were modified to require a pilot to obtain**
 12 **ten hours of rest following a canceled assignment."**
 13 **"Prior to 2021, a pilot could be dispatched for**
 14 **assignment" -- "for assignment immediately" after --**
 15 **"following a cancellation."**
 16 **I'm doing a bad job reading. I'm sorry.**
 17 **"Additionally in early 2021, stricter rules were**
 18 **enacted governing the dispatching of a pilot to three**
 19 **consecutive night assignments. These changes reduced**
 20 **pilot availability for fatigue management reasons and**
 21 **were enacted by rule or law."**
 22 **More or less what you said, no?**
 23 **A. Yes.**
 24 **Q. In other words, one of the reasons delays increased**
 25 **significantly is because pilot availability suffered**

1 since 2021?
 2 A. Pilot availability has suffered since 2015.
 3 **Q. But here in your testimony that we reviewed a moment**
 4 **ago on page 5, line 18, you said that the increase in**
 5 **delays that you were focused on was 2021 compared to**
 6 **2019.**
 7 **Did I mishear that?**
 8 A. No. But did you ask me if pilot delays have existed
 9 since -- in 2021 and -- or I mean, if pilot shortage
 10 was in place in 2021, and I clarified that it's
 11 been -- we've been short a pilot since 2015.
 12 **Q. I think the question perhaps was not phrased as well**
 13 **as it could have been. The focus of my question was**
 14 **meant to be on the reasons delays increased**
 15 **significantly. And as you are testifying about**
 16 **since -- and so pilot availability is what you're**
 17 **pointing to; correct?**
 18 A. Yes.
 19 **Q. And we're talking about the increase, on that page,**
 20 **between 2019 and 2021?**
 21 A. Yes.
 22 **Q. All right. We're on the same page now.**
 23 **And was it significant regulation changes, those**
 24 **are your words, that reduced pilot availability -- it**
 25 **was those changes that reduced pilot availability**

1 points.
 2 **On the one hand you're saying if the system has**
 3 **the same number of working pilots and the regulatory**
 4 **change is basically codifying an existing law that**
 5 **had already been on the books since 2019, how are**
 6 **these the primary contributing factors to increase in**
 7 **delays that you're talking about here?**
 8 A. Well, first of all, look at the table at the top of
 9 20 -- the top of that page. And that's including the
 10 president in 2021. That -- I mean, this is -- our
 11 problem is the playing fast and loose with the
 12 numbers. We didn't have 49.6 working pilots. We had
 13 48.6.
 14 So they aren't the same.
 15 **Q. Captain Carlson, could you turn to the next page?**
 16 A. Yes.
 17 **Q. Page 6. And you identify there another primary**
 18 **contributing factor there, starting at line 3.**
 19 **And that is that a primary contributing factor to**
 20 **the increase in delays was a change in how PSP logs**
 21 **delays?**
 22 A. Yes.
 23 **Q. And so you said, also, "For many years prior to 2021,**
 24 **PSP dispatchers exercised discretion in how delays**
 25 **were reported in our system. Generally, the**

1 **by -- by -- I mean, I guess by how much are you**
 2 **saying that they reduced -- did those changes reduce**
 3 **pilot availability from 2019 to 2021?**
 4 A. Okay. Maybe I can say this, that in 2021 there were
 5 217 vessels that canceled. In 2019, there were 120.
 6 So that's, like, an 80 percent difference. And now
 7 in 2019, pilots could still go right to work after a
 8 cancellation under certain circumstances. In 2021,
 9 they could not. It required an immediate ten-hour
 10 reset. So that had a significant impact.
 11 In 2019, a three-and-out meant -- a three-and-out
 12 period began at -- at travel time, not at call time.
 13 In 2021 -- in April in 2021, when the Commission
 14 adopted -- or set the WAC, the three-and-out period
 15 began at call time, which was a two-hour difference
 16 in time. Now we were able to -- because we reduced
 17 the call time on nighttime assignments, that had a
 18 positive impact. But nevertheless, the
 19 three-and-outs were significant in 2021.
 20 **Q. Captain Carlson, could you please look at the bottom**
 21 **of page 5, at line 19, where you say, "I would first**
 22 **state my opinion that the system suffered from the**
 23 **same shortage of pilots in 2019 and 2021."**
 24 A. That is true.
 25 **Q. So I'm having some trouble reconciling these two**

1 dispatchers would log a delay only if it caused a
 2 major impact on vessel scheduling, and this
 3 determination was left to the discretion of the
 4 individual dispatcher. Delays occurred in 2019 and
 5 earlier that were not recorded by our dispatchers
 6 early in 2021.
 7 "After I became president, I requested that our
 8 dispatch team change their recording practice to log
 9 each and every delay, regardless of its impact on
 10 vessel scheduling. This more expansive recording
 11 practice certainly contributed to the increase in
 12 delays."
 13 **So was your testimony that delays occurred in**
 14 **2019, earlier, that were not recorded?**
 15 A. It is. I can tell you how I discovered they weren't
 16 being reported if you'd like.
 17 **Q. Do you have any documentation of -- about that**
 18 **discovery?**
 19 A. No, I do not. Other than my word and the word of
 20 other dispatchers.
 21 **Q. Do you have -- can you tell us what the dispatcher**
 22 **practice was between 2019 and 2020? I feel like**
 23 **we're missing a couple years here.**
 24 A. I can't tell you exactly what their practice was
 25 because I wasn't president. It was only while I was

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1 in the office as president that a dispatcher said to
 2 me, "You know, Ivan, we don't record all delays."
 3 And then I said, "Well, do that."
 4 **Q. So -- and Captain Carlson, you weren't president in**
 5 **20 -- before 2019, but you testified about what**
 6 **occurred before -- up until 2019 or before 2019;**
 7 **correct?**
 8 A. As far as the rest rules you mean, shortage of
 9 pilots? Or what are you --
 10 **Q. So I'm looking at your testimony on page 6. And you**
 11 **said that -- what I just read to you, "delays**
 12 **occurred in 2019 and earlier that were not recorded**
 13 **by our dispatchers." And then we jump to 2021 in**
 14 **your testimony.**
 15 **How is it that you know what happened in 2019 and**
 16 **earlier, but you don't know what happened in those**
 17 **two missing years?**
 18 A. In 2020? Well, 2021 was a one-off and I don't think
 19 there was many delays. So it wasn't quite the issue
 20 that it would have been in '19 or that it was in '21
 21 or that it is in '22.
 22 **Q. Could you please turn to Exhibit BV-3X. And that's**
 23 **for Brett Valentine. So that's the -- some discovery**
 24 **responses of PSP dispatcher Valentine.**
 25 A. Yes.

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1 **Q. And please turn to page 20.**
 2 **Are you there?**
 3 A. I am.
 4 **Q. Okay. Do you see his response there? He says, "In**
 5 **2019 and 2020, there was no PSP policy or standard**
 6 **practice to record all ship delays. That changed in**
 7 **2021, per oral instructions from PSP president,**
 8 **Captain Ivan Carlson."**
 9 **Do you agree that there was no PSP or standard**
 10 **practice for recording ship delays in 2019 or 2020?**
 11 A. I agree that there was no specific instructions. And
 12 now you make me -- I haven't even -- I should
 13 probably formalize my instructions in a document.
 14 But anyway, yes. I agree.
 15 **Q. Okay. So if we asked for any document that had a**
 16 **policy or a standard for PSP now for before 2021, we**
 17 **wouldn't find that?**
 18 A. Yes.
 19 **Q. And your change in how delays were logged was oral**
 20 **only?**
 21 A. Yes. With each of the dispatchers.
 22 **Q. Could you look on the next page, page 21. It's a**
 23 **PMSA Data Request 680 and Dispatcher Valentine's**
 24 **response there.**
 25 **He says, "These delays were omitted simply due to**

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1 **lack of recognition of the importance of an accurate**
 2 **accounting of delays."**
 3 A. Yes.
 4 **Q. Do you agree that's why the delays were**
 5 **omitted?**
 6 A. I think that's probably why most of them were
 7 omitted, yes. I'm not sure if others -- I'm not sure
 8 if that encapsulates all of the reasons. I think it
 9 does. But I want to -- I'm not sure.
 10 **Q. Do you think that there was involved in that lack of**
 11 **recognition of the importance, that there was some**
 12 **indifference to the need for accurate information**
 13 **with respect to delays?**
 14 A. No. I think most of the delays are negotiated with
 15 the customers, with the agents. And so if one of our
 16 dispatcher calls an agent and says, hey, we're not
 17 going to be able to make that 1400 job, we can make
 18 it 1500. And the agent says, okay. In the past,
 19 that wasn't recorded, but now they're recorded.
 20 So they just didn't realize -- they -- if the
 21 agent says, yeah, no problem, they didn't think it
 22 was that big of a deal. But now they know.
 23 **Q. Could you please turn to Exhibit IC-29X.**
 24 A. IC-29.
 25 **Q. And this is the Puget Sound pilotage district**

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1 **activity report that you'll -- you'll see a series of**
 2 **monthly activity reports.**
 3 A. Right.
 4 **Q. PSP files these with the BPC every month; right?**
 5 A. Yes.
 6 **Q. And then the BPC provides these to its Commissioners**
 7 **and to the public and stakeholders; right?**
 8 A. We provide them to the Commissioners, to the
 9 Commission, they distribute them.
 10 **Q. And they distribute them to the public and to**
 11 **stakeholders; right?**
 12 A. Yeah. I think they just put it on their website.
 13 But, yeah.
 14 **Q. So if you look at what it has here on this first**
 15 **page, that's for December 2019; right?**
 16 A. Yes.
 17 **Q. If you look at the top half of the page, do you see**
 18 **where it says, "Assignments delayed due to**
 19 **unavailable rested pilot," and it says No. 5; right?**
 20 A. I do.
 21 **Q. And total delay time, 11.5 hours.**
 22 A. I see it.
 23 **Q. According to your testimony and the response of**
 24 **Mr. Valentine, should we presume that these numbers**
 25 **are not accurate?**

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1 A. It's hard for me to know. I don't think -- if they
 2 didn't record them at the time, they're gone.
 3 They're not recorded anymore. I mean, if they
 4 weren't on record, they're not -- they're not on
 5 record.
 6 **Q. So PSP did not recognize the importance of an
 7 accurate accounting of its activities and submissions
 8 to the State?**
 9 A. Yeah. Yeah. They negotiated with the agents. The
 10 agents said no problem. So it was -- yeah.
 11 **Q. But you don't actually know what the reasons were
 12 behind which ones were recorded and which ones were
 13 not in each instance, do you?**
 14 A. No.
 15 **Q. Can you turn to page 3. You can see that there's a
 16 report for January 2019.**
 17 A. Yes.
 18 **Q. And so we should also presume that these could be
 19 inaccurate?**
 20 A. They could be.
 21 **Q. And your answer would be the same for all of the
 22 reports in 2019?**
 23 A. Yes.
 24 **Q. So we also have exhibits for 2017 and 2018. Those
 25 are IC-27X and IC-28X. Should we also presume -- you**

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1 **don't have to pull them up. Should we just presume
 2 that they would not be reliable for those two
 3 factors?**
 4 A. The delays?
 5 **Q. The same two things we're looking at, the assignments
 6 delayed due to unavailable rested pilot and the total
 7 delay time.**
 8 A. Yes. I would assume that they may not be 100 percent
 9 accurate.
 10 **Q. Does the PSP president review these reports before
 11 they are submitted to the BPC every month?**
 12 A. Yes.
 13 **Q. Could you please turn to --**
 14 A. Excuse me.
 15 **Q. -- Exhibit IC-25X?**
 16 A. Can I back up that answer? I, as president, review
 17 them every month. I'm not sure what was done before
 18 me. But I, as president, since I took over in
 19 January of '21, do it every month.
 20 **Q. Thank you.**
 21 **If you could please turn to Exhibit IC-25X. This
 22 is your testimony from the prior rate case. So you
 23 can see there it's from 2019.**
 24 **And if you can scroll to -- or I guess flip pages
 25 to page 7.**

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1 A. Page 7. Okay.
 2 **Q. Now --**
 3 A. Excuse me, Ms. DeLappe. Are you referring to the
 4 document page 7 or are you referring to the upper
 5 right-hand labeling page?
 6 **Q. The upper right-hand label. Thank you. Exhibit
 7 page 7. Good clarification.**
 8 **If you look at line 14.**
 9 A. Okay.
 10 **Q. And I actually should -- it must be actually in the
 11 document. Yes, you are right. It's the document
 12 page 7, exhibit page 9.**
 13 **So if you see there at line 14 you testified,
 14 quote, "Delays awaiting pilots have not been common
 15 historically because of our heavy reliance on
 16 callbacks. In fact, in recent years, PSP completed
 17 over 99.9 percent of vessel movements on time.
 18 "Unfortunately, starting in 2018, we have had an
 19 insufficient number of active working pilots due to a
 20 variety of circumstances and were simply unable to
 21 match our previous success rate of moving ships at
 22 their requested order time."
 23 **Can -- and if you look now, let's see, page --
 24 the next page at line 10. You testified that PSP had
 25 70 delays in 2018. And you also quantified the****

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1 **delays in 2019 through September 30th of the year as
 2 72; right?**
 3 A. That's correct.
 4 **Q. So if you could, then, please turn to Exhibit 21X.
 5 Those are UTC Staff data requests to PSP. And on
 6 pages 1 and 2 of that document, do you see that UTC
 7 Staff asked you to demonstrate the basis for your
 8 claims regarding the number of delays experienced in
 9 2018, 2019? And just to clarify, as you can see from
 10 the date prepared, this was all in the context of the
 11 prior rate case.**
 12 A. Yes.
 13 **Q. And you responded ship delay logs, basically; right?**
 14 A. Yes.
 15 **Q. All right. And if we scroll down -- or flip pages to
 16 starting with page 3, are those the ship delay logs
 17 that you were referring to?**
 18 A. Yes.
 19 **Q. Given your earlier testimony, can you assure anyone
 20 here of the accuracy of these ship delay logs?**
 21 A. No.
 22 **Q. Do you know, then, whether these logs included the
 23 same information as PSP reported to the BPC in their
 24 monthly activity reports for 2018 and 2019?**
 25 A. Excuse me. I misstated something. I can verify that

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1 those delays that are logged in there are accurate.
 2 I can't verify that there weren't other delays.
 3 **Q. Understood.**
 4 **And do you know whether these logs would match**
 5 **the numbers that were provided in the monthly**
 6 **activity reports to the BPC for 2018 and 2019?**
 7 A. I -- they most likely did. I -- I can't -- I can't
 8 do the math right now; right? But I'm assuming they
 9 did.
 10 **Q. Would it be fair to say that your prior testimony in**
 11 **the prior rate case, that PSP's historic service**
 12 **reliability of 99.9 percent was also likely**
 13 **unreliable?**
 14 A. Yes.
 15 **Q. If you could please turn back to the Order 09 in the**
 16 **last rate case. That's Exhibit WTB-18X. And going**
 17 **back to page 65. This time, paragraph 199. And I**
 18 **will read from that if you're ready.**
 19 A. Yeah. Go ahead.
 20 **Q. "PSP witness Captain Carlson testifies that PSP is**
 21 **obligated to move ships on time and without delay**
 22 **when possible, stating that, historically, PSP's**
 23 **on-time vessel movement rate has been over**
 24 **99.9 percent. According to Captain Carlson, however,**
 25 **the number of active working pilots has been**

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1 insufficient to meet PSP's previous on-time rate
 2 since 2018, resulting in PSP's increased reliance on
 3 the practice of calling back off-duty pilots to
 4 perform assignments."
 5 **If you could turn to page 73 of this same exhibit**
 6 **and look at paragraph 226. And I will quote here.**
 7 **"Commendably, PSP has limited vessel delays**
 8 **despite average demand level of staffing.**
 9 **Captain Carlson testifies that in recent years, PSP**
 10 **has completed 99.9 of vessel movements on time. PMSA**
 11 **witness Captain Moore likewise testifies that the**
 12 **vessel delays are infrequent and represent less than**
 13 **one percent of vessel movements."**
 14 **So from these two paragraphs that we just looked**
 15 **at, do you agree that the UTC final order relied on**
 16 **the representations that you made to evaluate PSP's**
 17 **ability to provide reliable vessel service?**
 18 A. I am not sure what they -- I don't know that they
 19 relied on these two statements. They made these two
 20 statements. But I'm not sure if they made any
 21 decisions based on these two statements.
 22 **Q. Let's go ahead and look back at the presentation that**
 23 **we were looking at before, Exhibit IC-26X. And**
 24 **specifically this time I'm looking at pages 10 and**
 25 **11.**

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1 **Would you agree, based on what's on those pages,**
 2 **that the point PSP is making in those pages is that**
 3 **reducing delays is interconnected with and a coequal**
 4 **goal with managing fatigue and managing callbacks?**
 5 A. It is -- reducing delays is important. Managing
 6 callbacks is important. Safety through fatigue
 7 management as one of those -- one of the drivers in
 8 safety is probably most important. So I don't agree
 9 that they're coequal. But I do agree that we do need
 10 to manage callbacks, and then, therefore, also reduce
 11 delays, which more pilots will help us do that.
 12 **Q. So on that page 11, where it has an image of a --**
 13 **kind of Mobius triangle; right?**
 14 **So you have manage fatigue, manage callbacks and**
 15 **reduce delays. You're saying there's no**
 16 **interconnection between those three goals?**
 17 A. No. I didn't say that. I said they're --
 18 **Q. I'm checking --**
 19 A. -- they're not coequal.
 20 **Q. They're not coequal.**
 21 **So given the focus, however, at some level, as**
 22 **shown in these slides on delays, fatigue, and**
 23 **callback issues in PSP's advocacy at the UTC and at**
 24 **the BPC, do you think it's reasonable to accept that**
 25 **PSP did not keep track of delayed duties simply due**

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1 **to a lack of recognition of the importance of an**
 2 **accurate accounting of delays?**
 3 A. Yeah. That's -- that's correct.
 4 **Q. You think that's reasonable, though?**
 5 A. I will say nobody in leadership knew necessarily that
 6 the dispatchers were not reporting negotiated delays
 7 of an hour or two or whatever with the agents.
 8 That -- we don't ask them what every phone call
 9 they -- they were on was about. We just trust them
 10 to do their job. If an agent says, yeah, no problem,
 11 well, then you think it's no problem.
 12 But we're now --
 13 **Q. Captain Carlson --**
 14 A. -- recording them nonetheless.
 15 **Q. So, Captain Carlson, are you familiar -- I can point**
 16 **you to PSP -- the tariff, the proposed tariff at**
 17 **Appendix B of PSP's filing. You may already be aware**
 18 **of Item 360, "Delay, Detention, Standby, and Other,"**
 19 **which is at page 13.**
 20 A. Yes. I'm aware of the delay and detention.
 21 **Q. Do you agree that PSP charges multiple types of delay**
 22 **charges at a rate which is proposed to be \$270.05 per**
 23 **hour?**
 24 A. Yes.
 25 **Q. So what assurance do you have for ratepayers that the**

1 charges associated with vessel delays when invoiced
2 by PSP are accurate if you aren't able to assure
3 regulators that your vessel delay data has been
4 reliable and trustworthy?

5 A. Because we log the times and the times are -- that's
6 a -- that's logged. The delay time is logged by the
7 pilot. The ordered time, the departure time, and the
8 completion time is all logged by the pilot. You have
9 that data. And if the -- if the departure time
10 exceeds one hour from the order time, then there's
11 going to be a delay charge.

12 **Q. Captain Carlson, could you turn back -- I'm going to**
13 **switch topics now.**

14 **If you could turn to your rebuttal testimony,**
15 **Exhibit IC-08T, page 13. On that page, you have a**
16 **chart for -- that's labeled "Productivity"; right?**

17 A. Yes.

18 **Q. Looking at your data for 2021, because that's the**
19 **test year here, you listed the number of, quote,**
20 **"fit-for-duty pilots per year," including president,**
21 **as 49.14; correct?**

22 A. Yes.

23 **Q. If you can turn to Exhibit IC-14.**
24 **Do you have that in front of you?**

25 A. He's pulling that up right now.

1 **Q. And turn to page 23, that's the special purpose**
2 **financial statements for Puget Sound Pilots?**

3 A. Yeah.

4 **Q. And on page 23, if you look a couple -- couple lines**
5 **down, No. 2, you see the number of pilots there,**
6 **working pilot roster at 52.9 pilots?**

7 A. Yeah. Ms. DeLappe, and are you aware that the
8 working pilot roster includes pilots that no longer
9 hold a license but are burning comp days?

10 **Q. And I will just say, Captain Carlson, you will have**
11 **an opportunity to talk more on redirect. I only have**
12 **one more -- two more minutes with you.**

13 A. Okay.

14 **Q. So would you agree that your number of pilots that**
15 **you were using for calculations for workload in Table**
16 **IC-14 is -- so that's the one where you have 48.33.**
17 **That's about nine percent lower than the number of**
18 **pilots the accountant is using, 52.9, for purposes of**
19 **distributing revenues?**

20 A. I am aware of that. Yes.

21 **Q. Okay. So one last question, then, I have about PSP's**
22 **management fatigue at the time of pilot dispatch.**
23 **Would PSP ever knowingly dispatch pilots to jobs**
24 **in violation of the State's rest rules or any other**
25 **safety regulations?**

1 **Q. Okay.**

2 A. Okay. We have it.

3 **Q. Thank you. If you can look at line 17 on that. It's**
4 **a spreadsheet; right?**

5 A. Yes.

6 **Q. So there you have Puget Sound Pilots for 2021 and you**
7 **list the number of pilots?**

8 A. Yes.

9 **Q. That number is 48.33; right?**

10 A. It says 48 point -- oh, go to 2019. I'm sorry. He
11 went to -- we're on '22. Oh, no, I'm sorry. You
12 want '21; right?

13 **Q. Yes. For 2021.**

14 A. 2021, yeah. Okay.

15 **Q. Thank you. So there you have an -- in cell D17, you**
16 **have the number of pilots listed as 48.33?**

17 A. Yes.

18 **Q. And are you aware that Mr. Lough, in his comparable**
19 **reports table -- which I'll just represent for you,**
20 **that's on Exhibit DL-6 -- that he's listing the**
21 **number of Puget Sound Pilots for 2021 as 52?**

22 A. I see that as insignificant. It's two different --
23 it's -- I see it as insignificant.

24 **Q. And if you can turn now to Exhibit JJJ-02.**

25 A. Okay.

1 A. No.

2 MS. DeLAPPE: Thank you. With that, I will
3 rest. Thank you. No further questions.

4 JUDGE HOWARD: All right. Is there
5 redirect?

6 MR. HAGLUND: Yes, Your Honor.
7 REDIRECT EXAMINATION

8 BY MR. HAGLUND:

9 **Q. Captain Carlson, could you turn to that table in --**
10 **do you have the notebooks that I could --**

11 A. Well, this is my personal here. Here. Do you want
12 this one?

13 **Q. So, Captain Carlson --**

14 MR. HAGLUND: And, Mr. Crandall, could you
15 make sure this can be displayed on the screen for the
16 commissioners and all others?

17 BY MR. HAGLUND:

18 **Q. So if you could go to the -- you were asked about the**
19 **productivity -- this is IC-08T. And the productivity**
20 **table you were asked about is on page 13.**

21 **Can you pull that up? That's on page 12. This**
22 **is on page 13.**

23 **And on this table, Captain Carlson, what were you**
24 **trying to display here in your testimony?**

25 A. What I wanted the Commissioners to see was a couple

1 of things here. The comp time job ratio. But I also
 2 wanted them to see that the average on-watch
 3 assignments -- which is key to improving efficiency,
 4 the average on-watch assignments have increased
 5 substantially in 2022 versus 2019. And those are due
 6 to a lot of the efficiency measures we implemented as
 7 a result of Order 09.
 8 **Q. And if we look at that average on-watch efficiency,**
 9 **is it fair to say that that's documenting for the**
 10 **number of fit-for-duty pilots in that year, how many**
 11 **assignments each pilot, on average, performed?**
 12 A. Yes. Now -- and this is -- that's the average
 13 fit-for-duty pilots per year. So, yes.
 14 **Q. And do you know approximately how much the on-watch**
 15 **efficiency of PSP after implementing the various**
 16 **efficiency measures increased between 2019 and 2022?**
 17 A. About six and a half assignments per pilot, on
 18 average.
 19 **Q. And as a percentage level of increase, what is that?**
 20 **Do you recall?**
 21 A. I think it's a little over five percent. Maybe six.
 22 I forget.
 23 **Q. Okay. And then if you go to page 12, there's a table**
 24 **there that relates to this same issue.**
 25 A. Yes.

1 the scope of the cross.
 2 MR. HAGLUND: Well, she specifically asked
 3 about that table on page 13 regarding productivity
 4 and it's all linked to this. I only have a few more
 5 questions and one other table to cover, and then I'll
 6 be moving on. I just need two or three minutes, Your
 7 Honor, on a related topic that flows into the table
 8 she asked about.
 9 JUDGE HOWARD: To the extent it's related to
 10 that table, I'll -- I'll see where it goes.
 11 MR. HAGLUND: Okay.
 12 BY MR. HAGLUND:
 13 **Q. So question, if you recall, Captain Carlson, was just**
 14 **what's the time frame that the adoption of these**
 15 **different efficiency measures unfolded over?**
 16 A. Well, it appears about one year from start to finish.
 17 **Q. And it began in -- the first one being March of 2021?**
 18 A. Yeah.
 19 **Q. Less than three months after the Order 09 was issued?**
 20 A. Yes. And I would say it's not -- we're not finished.
 21 But start to this point right here.
 22 **Q. Okay. Now if we could go to page 10, there's one**
 23 **other table I wanted to ask you about.**
 24 **This table, what does it document?**
 25 A. So of the efficiency measures, it shows how many

1 **Q. And what were you trying to communicate, Captain**
 2 **Carlson, with this table?**
 3 A. I wanted the Commissioners to see we took their order
 4 serious, Order 09. And these are the measures we
 5 implemented. The -- the support is in blue for these
 6 measures. And I wanted them to see the timeline,
 7 also.
 8 **Q. And the blue bar to the right, what is being**
 9 **communicated there?**
 10 A. The percentage that the ballot passed by.
 11 **Q. So all of these changes in work rules, dispatch**
 12 **efficiencies, went out to a vote of the pilots as**
 13 **required by your bylaws?**
 14 A. Yes.
 15 **Q. And could you -- just for a sense of the timing,**
 16 **could you give the Commission the time range from the**
 17 **earliest efficiency rule adopted to the last one?**
 18 MS. DeLAPPE: Judge Howard, I, again,
 19 apologize for bringing an objection, but I don't see
 20 how this is related to my cross at all.
 21 JUDGE HOWARD: I'm sharing that concern. I
 22 think that the cross was primarily focused on the
 23 fatigue rules and dispatch and reporting of delays.
 24 I -- I'm worried if we go too far afield into
 25 different efficiency measures, that that is outside

1 times we were able to use them. The key element --
 2 one of the most significant elements is the combining
 3 of harbor shifts with inter-port assignments.
 4 Because what that means, when you see that total of
 5 130 -- and this began in April, so like I say, we're
 6 not done. But 130 assignments times combining those
 7 harbor ships in an inter-port job would have taken
 8 260 pilots. But instead, it took 130 pilots. That's
 9 significant.
 10 And then the others as well. Reducing the
 11 three-and-out, that's huge. Three-and-outs kill us.
 12 And so that's really important. And they're all
 13 important anyway.
 14 **Q. Now, Captain Carlson, let me just turn to another but**
 15 **related topic that relates to workload.**
 16 **Did you prepare a table that shows -- compares**
 17 **your workload to that of other pilot groups on**
 18 **page 15 of this -- your rebuttal testimony?**
 19 A. I did.
 20 **Q. And if we can pull that up. Same document. And just**
 21 **very briefly, what does it show relative to the Puget**
 22 **Sound Pilots compared to the -- I think it's another**
 23 **12 groups to which you assembled data and compared**
 24 **the workload of the Puget Sound Pilots. Which,**
 25 **first, when you are comparing workload, what are the**

1 **components that are well known to -- to be the**
2 **elements or ingredients of a pilot's workday?**

3 MS. DeLAPPE: Judge Howard, objection. Just
4 because we looked at something for the purpose of
5 looking at the number of pilots, it doesn't open the
6 door to all of this additional stuff that's
7 completely unrelated to the topics I was discussing
8 in cross.

9 JUDGE HOWARD: I -- I'm going to grant the
10 objection. I think, at this point, we are beyond the
11 scope. We're talking about comparability to other
12 districts, which was not raised in cross.

13 MR. HAGLUND: Okay. Fair enough.

14 BY MR. HAGLUND:

15 **Q. There were questions about the shortage of pilots,**
16 **the number of working pilots. Related question I**
17 **wanted to ask you, Captain Carlson, is: For the**
18 **benefit of the Commission, could you describe the**
19 **components of the PSP annual work schedule that show**
20 **the average PSP pilot is working more than equal**
21 **amounts of time on, time off?**

22 A. Yes, we are. In PMSA's testimony they said 177.65.
23 You have to add in those three PPWAs, which takes you
24 to 180.65, then the net callback days pilots work and
25 the off-watch meetings and the off-watch training.

1 course of the year was not raised in cross.

2 BY MR. HAGLUND:

3 **Q. The topic of callbacks was raised. And**
4 **Captain Carlson, do you consider the level of**
5 **callbacks that PSP experienced in 2022 to be**
6 **excessive?**

7 A. Yes.

8 **Q. And what's your understanding about where callbacks**
9 **should be to have a well-managed pilotage system?**

10 A. Below five percent. In B.C., it's below two and a
11 half.

12 **Q. And when it comes to the number of callbacks that the**
13 **average PSP pilot performed in 2022, that are net of**
14 **taking comp days in that year, what is that average**
15 **number for 2022?**

16 A. Six and a half.

17 **Q. And the five percent figure, what's the basis for**
18 **your position that that is where the system should be**
19 **going to in terms of callback jobs by off-watch**
20 **pilots?**

21 A. It's my understanding that nowhere in the United
22 States do pilots get called back as much as they do
23 in Puget Sound. Dr. Czeisler recommended below five
24 percent. He's a nationally recognized fatigue
25 expert, and that's a good enough reason for me.

1 And I prepared some numbers in my notes to recount
2 those numbers if you want them.

3 **Q. So for -- do you have the -- for 2022, the -- you**
4 **have the 177.65 on duty days for on-watch cycles;**
5 **correct?**

6 A. Yes.

7 MS. DeLAPPE: And objection. I did not have
8 any cross about the number of days.

9 MR. HAGLUND: Your Honor, it will just take
10 two more minutes. And this is related to the
11 assignment issues that she raised in discussing
12 tables. I'm almost finished with my redirect.

13 JUDGE HOWARD: I -- I think that this is
14 not -- not the exact topic that she was crossing on.
15 I think, at this point, we're talking about schedules
16 in general and hours worked per year and shifts, and
17 this was not the subject of cross.

18 MR. HAGLUND: So you're sustaining the
19 objection?

20 JUDGE HOWARD: I am.

21 MR. HAGLUND: Okay.

22 JUDGE HOWARD: I don't want to draw too
23 strict of lines here, because I recognize some of
24 these issues do overlap to a degree. But I do feel
25 that talking about shifts and hours worked over the

1 MR. HAGLUND: No further questions, Your
2 Honor.

3 JUDGE HOWARD: All right. Thank you.
4 Staff also indicated cross.

5 MR. CALLAGHAN: Thank you, Your Honor.

6 JUDGE HOWARD: You may proceed.

7 CROSS-EXAMINATION

8 BY MR. CALLAGHAN:

9 **Q. Good afternoon, Captain Carlson.**

10 A. Hi.

11 **Q. Do you have a copy of your rebuttal testimony with**
12 **you? That's IC-08 -- 08T.**

13 A. Hang on just a sec.

14 MR. HAGLUND: It can be put up on the screen
15 too.

16 THE WITNESS: Yeah.

17 MR. HAGLUND: Do you have a page?

18 THE WITNESS: Yeah. What page?

19 BY MR. CALLAGHAN:

20 **Q. Could you turn to page 24 of your rebuttal testimony**
21 **and let me know when you're there.**

22 A. Okay.

23 **Q. All right. In this part of your testimony, you**
24 **discuss the American Great Lakes Sports Association**
25 **versus Schultz case; is that right?**

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1 A. Yes.

2 **Q. All right. For the sake of convenience, I'm just**

3 **going to refer to this case going forward as the**

4 **Great Lakes case.**

5 **In this quote you include from the Great Lakes**

6 **case, it states that the pilots in that case lost**

7 **22 percent of their members over the span of seven**

8 **years, doesn't it?**

9 A. Yes.

10 **Q. And did you read this case in full?**

11 A. No.

12 **Q. No. Okay.**

13 **Do you know whether or not that decrease was a**

14 **net decrease?**

15 A. I think it was a net decrease. You know, keep in

16 mind, Mr. -- how do I say your name? Well, anyway,

17 I'm -- Nash, is that okay?

18 **Q. Yes.**

19 MR. HAGLUND: It's Callaghan.

20 BY MR. CALLAGHAN:

21 **Q. Callaghan.**

22 A. Callaghan. Keep in mind that I'm at meetings

23 nationally with these presidents of these

24 associations of the Great Lakes. I hear about it all

25 the time. So I -- I'm not sure if it was a net, but

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1 I think it was.

2 **Q. Okay. Has there been a net decrease of pilots in PSP**

3 **since the Commission set rates in the last rate case?**

4 A. No. But there hasn't been an increase to the number

5 of 56 that's authorized. And there are pilots on the

6 list -- on a pilot list somewhere else. And most

7 likely moving. This particular pilot won't let me

8 say where because it's -- well, he won't let me say

9 where. But we have five pilots that are wanting to

10 go to other districts. One is going to Florida this

11 fall to look at the different groups down there to

12 decide where he's going to test.

13 **Q. So, Captain Carlson, those are -- what you're**

14 **discussing is something that might happen in the**

15 **future; correct?**

16 A. One of them is a definite, and one of them is a

17 might. And then the other three are also might. You

18 are correct.

19 **Q. Okay. Did you read the Commission's final order in**

20 **the last pilotage case, Order 09?**

21 A. Yes.

22 **Q. And do you recall whether or not the Great Lakes case**

23 **was discussed in that order?**

24 A. I think it was a little bit. I'm not quite sure. I

25 know it was in one of our -- I think it was in our

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1 post hearing brief, but I forget if it was discussed

2 in the order.

3 **Q. Okay. Do you have a copy of Exhibit WTB-18X with**

4 **you?**

5 A. We're getting it pulled up now.

6 What page?

7 **Q. So if you could turn to -- this is exhibit page 51,**

8 **of the order it's page 46.**

9 A. Okay.

10 **Q. And I'm looking at paragraph 151.**

11 **If you could review paragraph 151 and let me know**

12 **when you're finished.**

13 A. Okay.

14 **Q. All right. So in the previous rate case, the**

15 **Commission did not find the comparison between the**

16 **Great Lakes case and PSP at the time to be a**

17 **persuasive comparison, did they?**

18 A. It appears not.

19 **Q. All right. And in -- there's been about two and a**

20 **half years since that decision was entered; isn't**

21 **that right?**

22 A. Yes. I -- yeah.

23 **Q. Okay. So is it PSP's position that there's been such**

24 **a large change in the last two and a half years that**

25 **the Great Lakes case is now comparable with PSP's**

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1 **current situation?**

2 A. Yes. It's significant because we are not earning the

3 DNI. And morale is -- is in the tank, and partly

4 because of the animosity with the industry. I mean,

5 work more, work more. No get -- I mean, industry

6 just suggested we have -- we receive a DNI that's

7 15 percent below what the Commission set the DNI at

8 last -- for 2022.

9 So, yeah. There's a -- look, I am not -- you go

10 ahead. I'm going too far.

11 **Q. I'm just asking in terms of the comparison between**

12 **net decrease in pilots in the Great Lakes case versus**

13 **PSP's current position.**

14 MR. HAGLUND: Objection. I didn't hear a

15 question there.

16 BY MR. CALLAGHAN:

17 **Q. So I'm asking whether PSP's position is that, in**

18 **terms of comparing a net decrease in the Great Lakes**

19 **case to what PSP is experiencing now, is your**

20 **argument that now these two cases are comparable?**

21 A. It is. And the reason -- it is. It is comparable.

22 We know that these pilots are going. There's no

23 question that one of them is leaving for sure. We

24 have a pilot that is hanging on to see the results of

25 this rate case. He's burning comp days right now and

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1 he's hanging on to see the results of this rate case.
 2 He said he'll go. And we have -- and that wasn't one
 3 of the five that I mentioned.
 4 So, yeah, we do know.
 5 **Q. All right. But in the Great Lakes case, they had**
 6 **already experienced a net decrease of 22 percent;**
 7 **correct?**
 8 A. That's correct. But we don't want to wait until
 9 already lost the pilot. We'd like to be preemptive.
 10 MR. CALLAGHAN: All right. No further
 11 questions, Your Honor.
 12 JUDGE HOWARD: Any redirect?
 13 MR. HAGLUND: None.
 14 JUDGE HOWARD: Do we have any questions from
 15 the bench for Captain Carlson?
 16 COMMISSIONER DOUMIT: Yes, I have a couple
 17 questions, Your Honor.
 18 JUDGE HOWARD: All right. Please proceed.
 19 COMMISSIONER DOUMIT: Captain Carlson,
 20 referring to your rebuttal testimony, which you just
 21 had I think in hand, Exhibit 5C-08T at page 18, lines
 22 19 through 23. Are you there?
 23 MR. HAGLUND: We just need another moment.
 24 COMMISSIONER DOUMIT: Okay. 18.
 25 It's on the automatic tariff adjustors.

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1 THE WITNESS: Okay.
 2 COMMISSIONER DOUMIT: And in those lines,
 3 you state that PSP believes that the adoption of
 4 automatic tariff adjustors will set the stage for
 5 potential negotiations with PMSA to develop tariff
 6 adjustors that would be used to address capital and
 7 maintenance costs related to PSP's pilot station in
 8 Port Angeles and its two pilot boats.
 9 And my question is whether you can clarify for
 10 the record whether there have been any prior
 11 discussions or engagement with PMSA in developing
 12 tariff adjustors?
 13 THE WITNESS: Well, when you say "prior,"
 14 how far back should we go?
 15 COMMISSIONER DOUMIT: I mean, have you --
 16 well, as far back as -- I mean, have -- in any -- at
 17 any point, we'll just start there. And to your
 18 knowledge, have you --
 19 THE WITNESS: Yes.
 20 COMMISSIONER DOUMIT: -- had prior
 21 discussions. And if so, what came out of those
 22 conversations? Maybe just give me the general time
 23 frame for when those occurred and if anything has
 24 happened recently.
 25 THE WITNESS: Well, there were MOU periods

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1 where there was an automatic adjuster. There was a
 2 number of pilots, a COLA, and a number of adjustors
 3 there. PMSA opted -- we had attempted to
 4 renegotiate, to negotiate a new MOU period beginning
 5 2006. PMSA wasn't interested. So we terminated. We
 6 didn't actually terminate. We let the MOUs -- the
 7 five-year period expire and then we didn't renew it.
 8 There was some talk about adjustors, and we did
 9 have a period in 2015 where we came to the table with
 10 a joint proposal for a tariff. We differed on the
 11 amount. But a tariff structure that made adjustments
 12 to the pilot vote fee, which -- and reduced tonnage
 13 charges and LOA charges.
 14 So we have been able to negotiate with them.
 15 But not so much in a long time.
 16 COMMISSIONER DOUMIT: So not since 2015 it
 17 sounds like. So why are you saying when -- that you
 18 might be able to catalyze discussions again based on
 19 the adoption of tariff adjustors now? What gives you
 20 confidence you'll be able to get to the table with
 21 them going forward?
 22 THE WITNESS: Well, this here -- these
 23 adjustors that we're discussing here are auto
 24 adjustors for the pilot boats and capital costs,
 25 which we removed. So our hope moving forward,

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1 long-term hope, is that we have auto adjustors on
 2 some things and that once they've been established
 3 and anchored in, then maybe we can go to PMSA and
 4 look for auto adjustors on the pilot boat expense and
 5 the capital cost as well. It just eliminates a lot
 6 of issues.
 7 COMMISSIONER DOUMIT: So basically this
 8 time -- it's your hope that this would occur, then,
 9 these discussions in the future?
 10 THE WITNESS: Yeah. This here is speaking
 11 about the pilot boats in the capital, and we're
 12 moving it. Yeah.
 13 COMMISSIONER DOUMIT: Sure. Let's -- we
 14 visited this with Mr. Costanzo, but let's talk about
 15 retirement plan a little bit with you as well. I'm
 16 referring to Final Order No. 9, which you said you've
 17 read. That's in docket -- the last case docket,
 18 TP-190976. And look at paragraphs 191 through 193.
 19 The Commission ordered PSP to initiate
 20 discussions for the purposes of developing a plan to
 21 transition to a fully-funded defined benefit
 22 retirement plan.
 23 THE WITNESS: Yeah. I'm sorry,
 24 Commissioner. I was trying to get our --
 25 COMMISSIONER DOUMIT: Sorry. Go ahead.

<p style="text-align: right;">Page 359</p> <p>1 I'll wait until you get there. I apologize. 2 THE WITNESS: Yeah. 3 COMMISSIONER DOUMIT: 191. 4 THE WITNESS: Paragraph 191? 5 COMMISSIONER DOUMIT: Yeah. And 192. Yeah. 6 MR. HAGLUND: What page is that on? 7 COMMISSIONER DOUMIT: Page 58 of the order. 8 MR. HAGLUND: Thank you. 9 THE WITNESS: Yes. I've got it. 10 COMMISSIONER DOUMIT: Okay. And you recall 11 that the Commission ordered -- in that order, ordered 12 PSP to initiate discussions with PMSA for the purpose 13 of developing a plan to transition to a fully-funded 14 defined benefit retirement plan? 15 THE WITNESS: Yes. 16 COMMISSIONER DOUMIT: Is that correct? 17 THE WITNESS: Yes. 18 COMMISSIONER DOUMIT: And then I'm looking 19 at the initial testimony of Captain Moore, which is 20 at -- if you want to go there, it's at MM-1T at 21 page 254, lines 1 through 17. 22 THE WITNESS: Yes. 23 COMMISSIONER DOUMIT: And essentially, PMSA 24 alleges that PSP did not engage a mutually acceptable 25 third-party actuary as directed by Order 09 in the</p>	<p style="text-align: right;">Page 361</p> <p>1 further, Your Honor. Thank you. Thank you, Captain. 2 THE WITNESS: Thank you. 3 COMMISSIONER RENDAHL: Your Honor, I have a 4 follow-up to that. 5 JUDGE HOWARD: Please go ahead. 6 COMMISSIONER RENDAHL: So, Captain Carlson, 7 referring to that same part of the testimony in the 8 final order, the final order required that PSP engage 9 a mutually acceptable third-party actuary. 10 That wasn't actually done, was it? 11 THE WITNESS: Well, excuse me, Commissioner 12 Rendahl. But it -- but it also said "or mediator," 13 right? 14 COMMISSIONER RENDAHL: Well, but it wasn't a 15 mutually acceptable person, which was the intent of 16 the order. 17 THE WITNESS: We attempted to have a 18 mediator. And -- and they were -- they rejected it. 19 And then PMSA -- Mike Jacob contacted our attorney 20 and he said we don't need to go this formal route. 21 We can just do it informal. And that's, then, what 22 we did. And I think this is backed up by e-mail, but 23 I'm not sure. 24 And so -- in fact, yeah. It was in an e-mail. 25 We -- we had received word from PMSA, Mike Jacob,</p>
<p style="text-align: right;">Page 360</p> <p>1 last case. And I would ask to you: Is that true? 2 And if it is true, please explain why PSP did not 3 comply with that portion of the order. 4 THE WITNESS: I would say it's not true. 5 But at a minimum, we had a mutually-accepted mediator 6 that really, I think, is going to say we're -- he may 7 not declare an impasse. I'm not sure. But at a 8 minimum, I don't think the prospects are very good 9 for a mutual agreement. My experience in the whole 10 process is PMSA is not really interested in a 11 fully-funded defined benefit plan. That's my -- 12 that's my impression. 13 COMMISSIONER DOUMIT: All right. So just 14 based on your impression and opinion and the 15 adjustors, you have hope that there will be some 16 discussions. But on this point going forward, you 17 think it would be futile, essentially, to have an 18 order that asks you -- the two sides to get together 19 on the defined benefit plan. 20 Is that your -- how you feel? 21 THE WITNESS: I feel like unless -- yeah. I 22 don't believe they're -- they're acting in good 23 faith. I mean, I don't know how to say it nice, but 24 I don't believe they're acting in good faith. 25 COMMISSIONER DOUMIT: All right. Nothing</p>	<p style="text-align: right;">Page 362</p> <p>1 that we didn't need to go a formal route. When we 2 had proposed a mediator, they rejected it. So we 3 said, okay. And then we get this e-mail and 4 that's -- so it was a mutual situation where -- where 5 we tried, then going the route that we did. 6 COMMISSIONER RENDAHL: That was never 7 communicated to the Commission at the time, about 8 doing something different than the Commission had 9 directed; correct? 10 THE WITNESS: I -- maybe not. I'm not sure. 11 COMMISSIONER RENDAHL: Okay. Thank you. I 12 have no other questions. 13 THE WITNESS: Thank you. 14 MR. HAGLUND: I had a quick redirect 15 question, Your Honor. 16 JUDGE HOWARD: Please go ahead. 17 REDIRECT EXAMINATION 18 BY MR. HAGLUND: 19 Q. Captain Carlson, you were asked some questions about 20 automatic adjustors. 21 Given your involvement with pilot organizations 22 around the country, have you observed that when it 23 comes to capital cost items, industry and pilot group 24 leadership are often able to work things out? 25 A. Yes.</p>

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1 **Q. Okay. Cost of pilot boats, et cetera?**
 2 A. Yes.
 3 MR. HAGLUND: Okay. No further questions.
 4 JUDGE HOWARD: All right. Thank you.
 5 So we are almost at 5:00. I think we will
 6 conclude our hearing for today in a moment. As I
 7 indicated in an e-mail to the parties -- well, first,
 8 I should say, Captain Carlson, that would conclude
 9 your examination and thank you for your testimony. I
 10 will -- you are excused from the remainder of the
 11 hearing. I won't keep you in the hot seat while I
 12 finish.
 13 THE WITNESS: Thank you.
 14 JUDGE HOWARD: So as I indicated in an
 15 e-mail to the parties, I plan on beginning the
 16 hearing at 9 a.m. tomorrow.
 17 Are there any questions or concerns from the
 18 parties about logistics of the hearing or things of
 19 that nature? I'm imagining we're going to have to
 20 continue on to Friday. And we can discuss that more
 21 tomorrow.
 22 Is there anything we should discuss now?
 23 MR. HAGLUND: Yes, Your Honor. For planning
 24 purposes, I wanted to learn -- Dr. Czeisler has been
 25 monitoring today's meeting, and I wanted to learn

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1 whether the Commissioners were going to have any
 2 questions or requests that Dr. Czeisler explain his
 3 illustrations, which he could do early tomorrow I
 4 believe, if not now.
 5 JUDGE HOWARD: Do the Commissioners have any
 6 planned questions for Dr. Czeisler?
 7 COMMISSIONER RENDAHL: I do not, Your Honor.
 8 COMMISSIONER DOUMIT: Nor do I, Your Honor.
 9 CHAIR DANNER: Yeah. I don't either, Your
 10 Honor. Thank you.
 11 JUDGE HOWARD: Okay. It does not appear
 12 that there are any planned questions for
 13 Dr. Czeisler.
 14 MR. HAGLUND: Okay. Thank you. I
 15 appreciate that.
 16 JUDGE HOWARD: All right. And tomorrow, I
 17 believe we will pick up with our first witness,
 18 likely being Phil Essex. And then we will continue
 19 down the order of presentation with Brett Valentine
 20 and go from there.
 21 MS. DeLAPPE: And, Your Honor, would
 22 Sean McCarthy be placed back in order, since we
 23 skipped over him, I believe?
 24 JUDGE HOWARD: Yes. That's right. We will
 25 also need to address Sean McCarthy. We did discuss

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1 calling Phil Essex first, on the 6th.
 2 MS. DeLAPPE: Yes.
 3 JUDGE HOWARD: So possibly McCarthy would be
 4 after that. We can certainly discuss that in the
 5 morning.
 6 MS. DeLAPPE: Thank you.
 7 JUDGE HOWARD: Is there anything further we
 8 should address today?
 9 MR. HAGLUND: Not from PSP.
 10 MR. CALLAGHAN: Nothing from Staff, Your
 11 Honor.
 12 MR. BLOCK: Nothing from TOTE.
 13 MS. DeLAPPE: Nothing from PMSA. Thank you.
 14 JUDGE HOWARD: Thank you all. I'll see you
 15 all back here tomorrow morning at 9 a.m. We are off
 16 the record.
 17 (The hearing concluded at
 18 5:00 p.m.)
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1 C E R T I F I C A T E
 2
 3 STATE OF WASHINGTON
 4 COUNTY OF KITSAP
 5
 6 I, Carisa Kitselman, a Certified Court
 7 Reporter in and for the State of Washington, do hereby
 8 certify that the foregoing transcript of the
 9 videoconference evidentiary hearing on APRIL 5, 2023, is
 10 true and accurate to the best of my knowledge, skill and
 11 ability.
 12 IN WITNESS WHEREOF, I have hereunto set my
 13 hand and seal this 18th day of April, 2023.
 14
 15
 16 
 17 CARISA KITSELMAN, RPR, CCR #2018
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