

Docket No. TP-220513 - Vol. V

WUTC v. Puget Sound Pilots

April 6, 2023



206.287.9066 | 800.846.6989

1325 Fourth Avenue, Suite 1840, Seattle, Washington 98101

www.buellrealtime.com

email: info@buellrealtime.com



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION
COMMISSION

)	
WASHINGTON UTILITIES AND)	
TRANSPORTATION COMMISSION,)	
)	
Complainant,)	Docket No. TP-220513
)	
v.)	
)	
PUGET SOUND PILOTS,)	
)	
Respondents.)	

VIDEOCONFERENCE EVIDENTIARY HEARING - VOLUME V

Pages 367-667

ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

April 6, 2023

9:05 a.m.

(All participants appearing via videoconference.)

DATE TAKEN: April 6, 2023

REPORTED BY: CARISA KITSELMAN, RPR, CCR 2018

1 A P P E A R A N C E S

2 FOR PUGET SOUND PILOTS: (via Zoom)

3 MICHAEL HAGLUND
4 ERIC BRICKENSTEIN
Haglund Kelly LLP
2177 Southwest Broadway
5 Portland, Oregon 97201
6 503.225.0777
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
11 nash.callaghan@utc.wa.gov

12 FOR PACIFIC MERCHANT SHIPPING ASSOCIATION: (via Zoom)

13 MICHELLE DeLAPPE
14 Fox Rothschild LLP
1001 Fourth Avenue
Suite 4400
15 Seattle, Washington 98154
206.389.1668
16 mdelappe@foxrothschild.com

17 FOR TOTE: (via Zoom)

18 STEVEN W. BLOCK
Lane Powell
19 1420 Fifth Avenue
Suite 4200
20 Seattle, Washington 98101
206.223.7718
21 blocks@lanepowell.com

22 ALSO PRESENT: (via Zoom)

23 CHAIR DANNER
24 COMMISSIONER RENDAHL
COMMISSIONER DOUMIT

25 * * * * *

1	EXAMINATION	
2	EXAMINATION	PAGE
3	Philip Essex	
4	Cross by Mr. Block	372
5	Redirect by Mr. Brickenstein	385
6	Sean McCarthy	
7	Cross by Ms. DeLappe	388
8	Redirect by Mr. Haglund	412
9	Bruce McNeil	
10	Cross by Ms. DeLappe	428
11	Redirect by Mr. Haglund	440
12	David Lough	
13	Cross by Ms. DeLappe	450
14	Redirect by Mr. Haglund	510
15	Cross by Mr. Callaghan	510
16	Redirect by Mr. Haglund	515
17	Kathy Metcalf	
18	Cross by Mr. Haglund	518
19	Redirect by Ms. DeLappe	544
20	Michael Moore	
21	Cross by Mr. Haglund	551
22	Redirect by Ms. DeLappe	659
23	Cross by Mr. Callaghan	663
24		
25		

1 * * * * *

2 JUDGE HOWARD: Back on the record. It's
3 9:05 a.m. We're starting our second day of the
4 hearing in docket TP-220513. We're going to resume
5 with PSP's witnesses in a moment.

6 Could we have appearances -- short appearances
7 from the parties before we begin?

8 Turn first to PSP.

9 MR. HAGLUND: Mike Haglund, Haglund Kelly,
10 and my colleague, Eric Brickenstein, who will be
11 covering Mr. Essex, on behalf of Puget Sound Pilots.

12 JUDGE HOWARD: Thank you.

13 Could I hear from Staff?

14 MR. CALLAGHAN: Nash Callaghan, assistant
15 attorney general on behalf of Commission Staff.

16 JUDGE HOWARD: And could I hear from PMSA?

17 MS. DeLAPPE: Michelle DeLappe on behalf of
18 PMSA. Thank you.

19 JUDGE HOWARD: Thank you. And could I hear
20 from TOTE?

21 MR. BLOCK: Steve Block on behalf of TOTE.

22 JUDGE HOWARD: All right. Thank you.

23 So I see Mr. Essex has his video feed turned
24 on.

25 Can you hear me all right?

1 THE WITNESS: Yes, I can, Your Honor.

2 JUDGE HOWARD: All right. Great. If you
3 would please raise your right hand, I'll swear you
4 in.

5 * * * * *

6 Philip Essex, having been first duly sworn, was
7 examined and testified as follows:

8 THE WITNESS: I do.

9 JUDGE HOWARD: Thank you. Mr. Haglund,
10 could you please introduce the witness?

11 MR. BRICKENSTEIN: Good morning, Mr. Essex.
12 Could you please briefly describe your
13 profession and experience?

14 THE WITNESS: I currently serve as a tonnage
15 consultant for clients nationwide.

16 MR. BRICKENSTEIN: And can you describe,
17 just for me briefly, what that entails and what your
18 employment history has been?

19 THE WITNESS: Yes. I've been involved in
20 the tonnage activity for 41 years. I began my career
21 at ABS, where I learned my craft. I went on to run
22 the North American Measurement Divisions for both Det
23 Norske Veritas and Germanischer Lloyd, two other
24 class societies also delegated this activity by Coast
25 Guard. And I've run my own tonnage consulting

1 business for the past 13 years.

2 MR. BRICKENSTEIN: Thank you.

3 And did you submit initial and rebuttal
4 testimony in this rate case?

5 THE WITNESS: I did.

6 MR. BRICKENSTEIN: And is that testimony
7 true and correct to the best of your knowledge?

8 THE WITNESS: It is.

9 MR. BRICKENSTEIN: Thank you, Mr. Essex.
10 And I'll tender the witness for cross.

11 JUDGE HOWARD: All right. TOTE indicated
12 cross. And you may proceed.

13 MR. BLOCK: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. BLOCK:

16 Q. Good morning, Mr. Essex. Thank you for being here
17 this morning with us. May I ask you some questions
18 further to the testimony you submitted in writing?

19 A. Sure, Counselor.

20 Q. Okay. And I represent TOTE.

21 Do you understand that?

22 A. Yes, sir.

23 Q. Okay. So, Mr. Essex, you're not a pilot; right?

24 A. That is correct.

25 Q. You don't have any experience in actually operating

1 vessels; right?

2 A. No, sir, I don't.

3 Q. Okay. So anything that you might say or believe or
4 testify about regarding vessel operation
5 considerations, such as the risk of piloting, all of
6 that kind of thing, comes from other people who have
7 told you what impacts certain circumstances might
8 have.

9 Am I right?

10 A. That is correct.

11 Q. Okay. So you give opinions in your testimony about
12 the measurements of vessel size by either the GRT
13 methodology or the GT ITC, or domestic versus
14 international tonnage assessments, as a consideration
15 of the risk of pilotage; right?

16 A. I gave testimony relative to how vessels are measured
17 and how GT ITC is a more accurate indication of the
18 overall size of a vessel. How those numbers are
19 applied varies from application to application.

20 Q. Yes. But you also -- you assert in your testimony
21 that these are considerations that should be taken
22 into account when determining the level of risk a
23 vessel might pose for piloting; am I right?

24 A. Yes.

25 Q. Okay. But you don't consider such things as the

1 maneuverability of a vessel, or the handling, other
2 vessel characteristics other than its tonnage, in
3 determining the risk of piloting a given vessel such
4 as TOTE's.

5 Am I right?

6 A. That is correct.

7 Q. Okay. So you're not here to say, and you don't say,
8 that TOTE's vessels, these two vessels that we're
9 here about today, are more risky, less risky, or as
10 risky as other vessels that PSP might service.

11 Am I right?

12 A. No. There are other people who are more qualified to
13 discuss that.

14 Q. So my statement is correct; right?

15 A. Yes, sir.

16 Q. And you also don't have any background in how
17 pilotage rates should be set or calculated. That's
18 not your speciality.

19 Am I right?

20 A. That's correct.

21 Q. Your testimony is simply that the GT ITC approach to
22 measuring tonnage better represents vessel size than
23 the GRT approach.

24 Am I right?

25 A. Absolutely.

1 Q. Okay. I would like to just read some testimony to
2 you and just so it's in your mind. I'm just going to
3 ask you if you agree with this or stand by it. Okay?

4 "GT ITC provides a more accurate and standardized
5 measure of a vessel's size by including and
6 calculating the total volume of its external
7 dimensions, including super structures, voids, fuel
8 and water tanks and other volumetric structures. GRT
9 on the other hand, is subject to exclusions from the
10 total volume calculation, only measuring those spaces
11 which carry cargo, while also providing opportunities
12 in ship design to exclude cargo spaces."

13 Is that accurate?

14 A. The first part of what you said is accurate. I would
15 take some exception to the second part.

16 Q. Which part would you take exception to, sir?

17 A. Okay. Briefly, as you stated in the testimony you
18 quoted, GT ITC or international tonnage is based on
19 the molded volume of the vessel, both the hull and
20 the super structure. And that total volume is then
21 cranked through a formula to provide the new gross
22 tonnage. When those rules were developed in 1969 in
23 London, the idea when they came up with the formula
24 was to come up with tonnages that, in the
25 international picture, would be similar to the

1 tonnages under the older national rules. The older
2 national rules are all based on what we call the
3 Moorsom system. U.S., British, et cetera. And there
4 are variations within those systems.

5 In the case of the U.S., we went a step beyond
6 most national entities and there are exclusions
7 beyond the norm that, if done correctly, certain
8 spaces can be exempt or excluded from gross tonnage.
9 And that was the case in the -- of the two TOTE
10 vessels.

11 Q. Okay. Well, do you agree with the clause that GRT
12 only measures those spaces which carry cargo?

13 A. No. GRT is supposed to represent the overall size of
14 the vessel, less certain spaces that are exemptible.
15 Examples of exemptions would be public water closets,
16 water ballasts, wheelhouse, machinery spaces.

17 Q. Okay.

18 A. From GRT, you subtract other spaces to get to net
19 tonnage. That's the number that's supposed to
20 represent the cargo-carrying capability of the vessel
21 in cubic feet.

22 Q. All right. Do you recall ever hearing or reading the
23 testimony that I just read to you?

24 A. It did sound familiar.

25 Q. It did?

1 A. I don't believe it was mine.

2 Q. Yes. Would it surprise you to learn that it came
3 from Captain Klapperich?

4 A. That's quite possible. I did read some documentation
5 from other individuals.

6 Q. Okay. So you don't totally agree with
7 Captain Klapperich on this point; am I right?

8 A. I wouldn't say I disagree, Counselor. I think his
9 capsulation of GT ITC was correct. I believe there
10 were some slight inaccuracies relative to what
11 characterizes GRT and NRT, or net reg tonnage under
12 the U.S. regulatory system.

13 Q. All right. Thank you.

14 So I'm going to move on. I don't have a lot for
15 you here, and time is an issue. So I just want to
16 proceed.

17 You talk about three assumptions that you make in
18 giving the opinions. And I'll just -- I'm not going
19 to read them verbatim. The first one is: My first
20 assumption is that an appropriate metric for
21 calculating pilotage rates is a metric that supports
22 rates that are fair, just, and reasonable. I don't
23 think anybody would dispute that.

24 The second one is that fair, just, and reasonable
25 rates should give considerable weight to the relative

1 difficulty and risk of piloting a particular ship;
2 right? Do you recall that as your second assumption?

3 A. If you're quoting from my testimony, sir, I will say
4 yes.

5 Q. Okay.

6 JUDGE HOWARD: Mr. Block, could we get a
7 page and an exhibit cite?

8 MR. BLOCK: It's --

9 JUDGE HOWARD: Page 13 with his --

10 MR. BLOCK: Page 14. Page 14 of the
11 original testimony.

12 JUDGE HOWARD: All right. Thank you.

13 BY MR. BLOCK:

14 Q. But you would not be aware of all of the
15 characteristics of a vessel that play into the
16 difficulty and risk of piloting a particular ship; am
17 I right?

18 A. That is correct.

19 Q. All right. The third assumption you make is that the
20 relative risk and difficulty of piloting a vessel
21 bears a strong causal relationship to that vessel's
22 size. That's your third point -- your third
23 assumption; right?

24 A. Could you tell me where that was in the written
25 testimony, sir? I just want to refer to it.

1 Q. It's on page 14.

2 A. Okay.

3 Q. And there's some additional points, you know, that
4 you raise after that, but that's the synopsis of your
5 assumption; right?

6 A. In general, from my perspective as a layperson and
7 not a pilot, I would agree that the larger the
8 vessel, the greater degree of difficulty.

9 Q. Okay. But you used the word "size"; right?

10 A. Well, size, in this context, I would use the word
11 "volume."

12 Q. Okay. Do you use the word "size" and "volume"
13 synonymously?

14 A. They can be synonymous, depending upon how much you
15 want to parse it.

16 Q. Okay. Well, let's see. By size or volume, whichever
17 term -- word you might use in this quoted text or
18 otherwise, you mean the length, width, height of a
19 vessel measured in feet or meters; right?

20 A. Yes, in cubic dimensions. That's correct.

21 Q. But you don't consider weight an aspect of size or
22 volume; is that right?

23 A. Not when it comes to measurement, regardless of the
24 measurement system used.

25 Q. Okay. And so you have no opinion about how a

1 vessel's weight impacts the risk of piloting it?

2 A. I do not.

3 Q. Did you hear or -- or -- I don't think you attended
4 Captain Klapperich's testimony yesterday, did you?

5 A. No, sir.

6 Q. Okay. Are you aware that TOTE's vessels are much
7 lighter than most vessels PSP operates or services?

8 A. I've heard comments like that in passing, but nothing
9 specific.

10 Q. But you don't have any --

11 A. I'm sorry, sir. You're talking physical weight now;
12 correct?

13 Q. I'm talking about the weight of the vessel when it's
14 operating loaded with cargo.

15 A. Okay.

16 Q. Would you agree that TOTE's vessels are lighter than
17 the typical vessel PSP operates?

18 A. I would only know that from other testimony, sir. I
19 don't have firsthand knowledge.

20 Q. Are you familiar with the vessel design of the Orca
21 class vessels?

22 A. The two vessels in question, in general, I am.

23 Q. In general you are? These are Ro-Ro vessels; right?

24 A. Yes.

25 Q. And they have a good deal of open space in the cargo

1 decks, just by the nature of the cargo they are
2 designed to carry. You can't stack automobiles or
3 trailers or tractors or things on wheels that have to
4 go on tracks side by side; am I right?

5 MR. BRICKENSTEIN: Your Honor, I'm going
6 to -- I'm going to object. Mr. Essex's testimony is
7 limited to opinions regarding add measurement and
8 tonnage calculations, and this is well beyond the
9 scope. I would also point that Mr. Block is past
10 time.

11 JUDGE HOWARD: I do wonder if this is beyond
12 the scope of the witness's testimony and expertise,
13 Mr. Block.

14 MR. BLOCK: Your Honor, he's addressing, you
15 know, vessel size and not defining size to include
16 what we believe is the more important aspect of size,
17 and how that might impact the safety of the vessel.

18 MR. BRICKENSTEIN: Your Honor, he's offered
19 an opinion regarding the difference between GRT and
20 GT ITC calculation. He's offered no opinions with
21 the cargo or the type of cargo that TOTE's ships
22 carry or anything related to that.

23 JUDGE HOWARD: I don't believe we've
24 established foundation of this witness on how cargo
25 is managed on TOTE ships. But I would encourage you

1 to -- to wrap up your cross in a minute or two here.

2 MR. BLOCK: I'm almost done.

3 BY MR. BLOCK:

4 Q. To sum up that testimony, I just have one other
5 little topic to get to for you. Your testimony is
6 limited to the length, width, and height of the
7 vessel as a factor to be considered in its size. And
8 you believe that bears on the risk involved in
9 operating that vessel based on what other -- other
10 people have told you.

11 Am I right?

12 A. I think it would be fair to say, sir, that I've
13 reviewed the tonnage calculations, both ITC and the
14 regulatory. I've pointed out why there is such a
15 discrepancy in the numbers. And in my opinion, in
16 the case of these two vessels, why GT ITC is a far
17 better indicator of their size than the GRT figures.

18 Q. Okay. You mentioned in your testimony the notion
19 that tonnage openings are what you call gimmicks used
20 to artificially reduce a GRT.

21 Do you recall that testimony?

22 A. Yes.

23 Q. Are you certain that the openings on the Orca class
24 vessels are tonnage openings?

25 A. From what I have seen in the photographs of the

1 vessel and in my site discussions with the measurer
2 who measured the vessel when it was initially
3 measured, who's the former head of the Coast Guard
4 tonnage survey branch and a professional acquaintance
5 of mine, I was able to confirm that tonnage openings
6 were the way that the upper two cargo decks were, in
7 essence, over 95 percent excluded from the gross
8 tonnage measurement, as depicted on the exhibit we
9 submitted from the calculation, page 9.

10 Q. Aren't tonnage openings typically much bigger than
11 the openings we see on these vessels?

12 A. No, sir. The minimum --

13 Q. Aren't they usually --

14 A. -- requirement -- I'm sorry. The minimum requirement
15 in the 46 CFR Part 69, which is the tonnage regs, is
16 that you have an opening of a minimum dimension of
17 4-foot by 5-foot. They can be larger. They're not
18 required to be larger.

19 Q. Okay. Wouldn't they usually have or necessarily have
20 a cover that could be put on them?

21 A. They can have a cover put on them, but that is not a
22 requirement.

23 Q. Okay. Do you know of any function of these openings
24 in the Orca class vessels?

25 A. Tonnage openings, in general, don't have a function

1 per se, except to permit the space that progresses
2 from them to be considered weather-tight, not
3 watertight, and therefore excludable from gross
4 tonnage.

5 Q. So you don't know anything about a Coast Guard
6 requirement that would require openings like this for
7 ventilation purposes and to access moorage wenches,
8 right?

9 A. No, sir. That is correct. But there's nothing that
10 precludes an opening to be used for that purpose. A
11 tonnage opening is strictly the opening in the
12 bulkhead.

13 For example, you can have closure plates, as you
14 referred to, and that's permissible. And that is
15 often done in the case of passenger vessels, where we
16 use tonnage openings to get complete deckhouses out
17 of tonnage in order to reduce their gross.

18 Q. Okay. And you didn't investigate that with NASSCO,
19 the construction shipyard of this vessel, did you?

20 A. No, sir.

21 MR. BRICKENSTEIN: Your Honor, if I may --

22 MR. BLOCK: Mr. --

23 MR. BRICKENSTEIN: Thank you.

24 MR. BLOCK: What?

25 MR. BRICKENSTEIN: Oh, I was just going to

1 note that you had gone past time, but it sounds like
2 you're wrapping up. So I'll --

3 MR. BLOCK: I have no further questions.
4 Thank you, Mr. Essex.

5 THE WITNESS: Thank you, Counselor.

6 JUDGE HOWARD: Thank you. Any redirect?

7 MR. BRICKENSTEIN: Yeah, I just have one
8 quick question for Mr. Essex.

9 REDIRECT EXAMINATION

10 BY MR. BRICKENSTEIN:

11 Q. Mr. Essex, which ships are required to have a GT ITC
12 add measurement?

13 A. Any vessel over --

14 MR. BLOCK: Objection. Beyond the scope.

15 MR. BRICKENSTEIN: Your Honor, this pertains
16 directly to his testimony regarding GRT and GT ITC.
17 This is fundamental to his testimony.

18 JUDGE HOWARD: I'm going to allow the
19 question. I don't think that this is truly a subject
20 in great controversy. Go ahead.

21 THE WITNESS: Thank you.

22 Any vessel over 79 feet in overall length in
23 the U.S. since 1992 has been required to get a
24 convention measurement, or GT ITC, for registration
25 purposes. They have the option of an additional

1 measurement, under the old new national system, what
2 we now call here GRT. But if that allows them to get
3 a lesser tonnage, that gives them other regulatory
4 opportunities.

5 MR. BRICKENSTEIN: Thank you, Mr. Essex.
6 Nothing further.

7 JUDGE HOWARD: All right. Do we have any
8 questions from the bench for this witness?

9 COMMISSIONER RENDAHL: Not from me, Your
10 Honor. Thank you.

11 CHAIR DANNER: Nor from me, Your Honor.
12 Thank you.

13 COMMISSIONER DOUMIT: No. Thanks, Your
14 Honor.

15 JUDGE HOWARD: All right. Mr. Essex, thank
16 you for your testimony today. You are excused from
17 the remainder of the hearing.

18 THE WITNESS: Thank you, Your Honor.

19 JUDGE HOWARD: With that, our next witness
20 is PSP's witness McCarthy.

21 Can you hear and see me all right?

22 THE WITNESS: Yes, I can.

23 JUDGE HOWARD: All right. If you would
24 please raise your right hand -- sorry, go ahead.

25 THE WITNESS: I cannot see you.

1 JUDGE HOWARD: Oh, okay. I'm not sure what
2 your particular setup is there.

3 THE WITNESS: Now I got you.

4 JUDGE HOWARD: All right. If you could
5 please raise your right hand and I will swear you in.

6 * * * * *

7 Sean McCarthy, having been first duly sworn, was
8 examined and testified as follows:

9 THE WITNESS: I do.

10 JUDGE HOWARD: All right. Thank you.
11 Mr. Haglund, could you please introduce the witness?

12 MR. HAGLUND: Yes, Your Honor.

13 Mr. McCarthy, how long have you been in the
14 marine insurance brokerage business?

15 THE WITNESS: I've been in the marine
16 insurance brokerage business for over 30 years.

17 MR. HAGLUND: And you're with what company?

18 THE WITNESS: I'm with Durham & Bates
19 agencies.

20 MR. HAGLUND: Did you prepare written
21 testimony, rebuttal testimony, in this case?

22 THE WITNESS: I did.

23 MR. HAGLUND: And is it true and accurate to
24 the best of your knowledge?

25 THE WITNESS: It is.

1 MR. HAGLUND: I tender the witness for
2 cross-examination.

3 JUDGE HOWARD: All right. PMSA indicated
4 cross for this witness. And you may proceed.

5 MS. DeLAPPE: Thank you very much, Your
6 Honor.

7 CROSS-EXAMINATION

8 BY MS. DeLAPPE:

9 Q. Good morning, Mr. McCarthy.

10 A. Hello.

11 Q. If you could please start by turning to Exhibit
12 SM-15X, and that is the 2023/2024 general liability
13 policy for PSP. Tell me when you're there.

14 A. I'm looking at the Licensed Defense/Loss of Income
15 Pilots Civil Legal Liability policy.

16 Q. Yes. Thank you very much.

17 And that is -- if you could please turn to
18 page 4, exhibit page 4.

19 A. Okay.

20 Q. And do you see there the coverage amounts and terms
21 for each member of PSP?

22 A. Yes.

23 Q. Each of those coverage amounts and terms are the same
24 for each member of PSP; correct?

25 A. I believe so, yes. It's -- it's small. But I think

1 we don't have any deputy pilots on that. So, yes,
2 they all have the same wage amounts.

3 Q. So if there's an individual pilot who has an incident
4 or who is involved in an accident, subsequent
5 increases in premiums or any reductions are reflected
6 in the rates imposed across all PSP members; correct?

7 A. That is correct.

8 Q. And so they're not changed just for that individual?

9 A. No, they're not.

10 Q. Okay. So turning now to SM-12X. That's your
11 responses to PMSA data requests.

12 And if you turn to page 6, you'll see data
13 request No. 584. Let me know if you're there.

14 A. Yep.

15 Q. So regarding how wages -- the wages policy coverage
16 of \$320,000 was determined, you responded that,
17 quote, "On an annual basis, PSP provides an estimate
18 of its anticipated net income per pilot for that
19 year, which is then the basis for the level of lost
20 income insurance"?

21 A. Yes.

22 Q. The determination that -- of that estimate, of
23 \$320,000, that's entirely internal to PSP and then
24 provided to you after that amount is determined;
25 correct?

1 A. Yes.

2 Q. So for the 2023/2024 fiscal year estimate of
3 \$320,000, approximately when, like, what date, would
4 you have heard from PSP regarding that estimate of
5 income?

6 A. Well, we try to begin our renewals about 60 days out
7 with an initial request for information, updates of
8 pilot schedules, updates of loss of income amounts,
9 any proposed change that they would like to see. It
10 could be anywhere from two weeks to four weeks.

11 Q. And so for this policy date, when would you have
12 heard from PSP with that estimate?

13 A. I would estimate probably a month before the actual
14 renewal date.

15 Q. Can you give me the name of that month?

16 A. Well, it would have been January, I believe.

17 Q. Thank you.

18 If you could please turn now back to SM-15X,
19 page 4.

20 When the latest policy became effective on
21 February 28, 2023, how many individual PSP pilots
22 were covered?

23 A. I believe that says 53.

24 Q. Thank you.

25 Now I'm going to turn to your testimony, SM-01T.

1 If you could please turn to page 9 of your testimony.

2 Are you there?

3 A. Yep.

4 Q. Thank you. Your testimony discussed growth in vessel
5 size as creating more risk for the maritime pilot;
6 correct?

7 A. Yes.

8 Q. And so it's your testimony here that these risks are,
9 quote, "Reflected in the aggregate size of maritime
10 casualty claims in 2020, 2021, 2022"?

11 A. Yes. That's information that I get from other
12 sources in the industry.

13 Q. And you cite here two reports to support that
14 statement at line 15. A number of -- that -- saying
15 that a number of factors are influencing this
16 increasing claims cost trend; correct?

17 A. Yeah. Yes.

18 Q. And so those two reports are "Best's Market Segment
19 Report 2022," and "Aon Protection and Indemnity"
20 2022?

21 A. Yes.

22 Q. And those two reports were attached to your testimony
23 as Exhibits SM-06 and SM-07?

24 A. I assume so.

25 Q. Do you want to flip back to the exhibit list that's

1 at --

2 A. No. I mean, if you say they were attached, then they
3 were attached.

4 Q. In reliance on the Best's Market Report at Exhibit
5 SB-06, you stated in your testimony that there are
6 three factors driving upward pressure on claims
7 costs; correct?

8 A. Best stated that. I just provided that information.

9 Q. Great. And so I'm just looking at page 9. What
10 you -- what you stated as far as -- that there are
11 three factors in your reliance on Best's Market
12 Report. That's line 16 through 22.

13 A. It says a number of factors are influencing this
14 claim, the increasing claim cost trends. And then
15 according to Best. I'm not sure where -- so Best --
16 their position is that there are three factors
17 driving the significant increases and lawsuits that
18 have been impacting the P&I clubs over the last
19 three -- over the last three years.

20 Q. Let me just read at line 21 from your testimony.

21 "Those factors, which continue to place upward
22 pressure on claims costs, include the increasing size
23 of vessels, which adds complexity when they suffer a
24 severe incident, an upward trend in ship owner
25 liability limits, and technological advances allowing

1 deepwater wreck removal"; right?

2 A. Correct.

3 Q. At -- let's talk about these three factors.

4 First, bigger vessels mean more complexity. In
5 other words, as vessels get larger, the potential
6 post incident claims get more costly because the
7 scope of potential post incident costs is more
8 complex than from an incident involving smaller
9 vessels.

10 Would you agree?

11 A. Yes.

12 Q. And would you agree that an evaluation of the risks
13 of post incident costs isn't -- is different from the
14 evaluation of the risks of navigation that exist
15 prior to an incident?

16 A. I'm not sure I understand your question.

17 Q. So when I'm -- when you're talking there about the
18 complexity of post incident costs, would you agree
19 that that does not involve the risks of navigation
20 prior to the incident?

21 A. Again, I'm not sure where you're trying to go. The
22 complexity --

23 Q. I'm just asking a question. You don't have to think
24 about where I'm going.

25 Just answer the question, please.

1 A. Well, your question is not clear to me. The
2 complexities of post -- if you would like to talk
3 about the complexities of post accident costs, that
4 is costs to remove wrecks are higher. The pollution
5 costs are higher around the world. That's been
6 demonstrated. Those are -- what they're talking
7 about is the complexity of post accident cost is
8 specific to -- to the casualty and managing a
9 casualty. That's what they're talking about. Not
10 anything associated to pre -- to operational risks
11 prior to the casualty.

12 Q. Perfect. Thank you.

13 So this is not a risk on pilotage risks or
14 navigation risk?

15 A. I'm not -- it is an exposure to pilots, in the event
16 of a casualty, that the risks are greater. So I'm
17 not sure how you split that hair.

18 Q. Well, I think you just did it by saying "operational
19 risks." It's not an operational risk. So I'll move
20 on to the --

21 A. It is --

22 Q. Mr. McCarthy, I'll move on to the second factor.

23 You stated, "Technological advances allowing
24 deepwater wreck removal."

25 That is also not a factor focused on operational

1 risks; correct?

2 A. No. That is a casualty risk.

3 Q. And the third factor, "An upward trend in ship owner
4 liability limits," is also not an operational risk;
5 correct?

6 A. Correct.

7 Q. Other factors discussed in the Best report are trends
8 with positive impacts on claims costs; correct?

9 A. I don't have that report in front of me. If you
10 would bring that up, I can --

11 Q. Actually, if you could please turn to SM-12X, again.
12 And this time, turn to page 10. This, again, is your
13 responses to our -- our data requests. So this is
14 PMSA data request No. 588.

15 A. Okay.

16 Q. And do you see here the quote from the Best report
17 that you agreed with, that -- that it says, "Factors
18 such as the fall in the age profile of vessels,
19 technological advances in navigation, investment in
20 loss prevention, and increases in club deductibles
21 continue to have a positive impact on claims costs."

22 And you said "admit"; right?

23 A. Right.

24 Q. So the Best report says general inflationary -- the
25 Best report also -- if you turn to the next page,

1 excuse me -- says that general inflationary pressures
2 can also be an influencing factor in pushing up
3 claims costs?

4 A. I'm waiting on that.

5 Q. Do you see that at SM-12X, page 11?

6 A. We're not there yet.

7 Q. It's just the next page. Are you there?

8 A. Social -- "The social inflation has also been
9 mentioned by some clubs is an influencing factor and
10 pushing up claims costs"?

11 Q. Correct.

12 A. Yes.

13 Q. Of these cost mitigating factors, you would not
14 consider increases in club deductibles to be a factor
15 involving pilotage risks or operational risks, as you
16 put it?

17 A. Say that again.

18 Q. So increases in clubs -- in club deductibles is not
19 an operational risk; right?

20 A. Are you talking for ship owners, that their
21 deductible increases from their P&I clubs are not
22 being driven by pilot risk? Is that the question?

23 Q. No. We were talking earlier -- and you established
24 that when we talked, for example, about post incident
25 costs, for example, that that's not an operational

1 risk. The same can be said for increases in club
2 deductibles. It's not an operational risk of the
3 pilot operating?

4 A. Again, deductible increases are specific to
5 operations. They're not casualty expenses. And
6 that's the -- the post casualty expenses, and
7 increases in post casualty expenses after the loss.
8 Deductible increases happen at the renewal and take
9 into account a number of different factors, and
10 losses and exposures being probably two of the
11 biggest ones.

12 Q. Great. And I'm -- I'm just going to keep following
13 the list of factors that are -- on page 10 of SM-12X.
14 So moving up that list.

15 "Investment in loss prevention," that doesn't
16 involve operational risks; right?

17 MR. HAGLUND: Which page were you referring
18 to so he can refer to that?

19 MS. DeLAPPE: SM-12X at page 10.

20 THE WITNESS: Loss prevention -- to your
21 point, loss prevention absolutely involves
22 operational risk. It is completely focused on
23 minimizing operational risks.

24 BY MS. DeLAPPE:

25 Q. So investment in loss prevention, you would say

1 that's a -- that's something that falls in the
2 operational risk side of things?

3 A. Absolutely.

4 Q. And how about a fall in the age profile of vessels.
5 That means, on average, vessels are newer now; right?

6 A. Yes.

7 Q. And older vessels are being phased out; right?

8 A. In -- the general trend, I would say yes. They --
9 they are not the same age, tonnage, operating today
10 that there were 15 or 20 years ago.

11 Q. So the age of the vessel is a risk factor that
12 potentially impacts pilotage risks or navigation
13 risk; right?

14 A. Yes.

15 Q. And how about technological advances in navigation.
16 That also potentially impacts pilotage risks or
17 navigation risk; right?

18 A. That's what this says. I'm an insurance broker. I'm
19 not an expert when it comes to the technology and
20 piloting.

21 Q. Okay. And it doesn't actually say that that is a
22 navigation risk. But it seems reasonable to infer
23 that; right?

24 A. Again, I'm not an expert when it comes to the
25 technology that the pilots are using on the ships and

1 how that impacts navigation.

2 Q. Right. And I'm not asking you to be an expert on
3 that.

4 But I'm just noting that Best's Market Segment
5 Report that you cited talks about that technological
6 advances in navigation is having a positive impact on
7 claims costs and that --

8 A. Yes.

9 Q. -- that seems to be --

10 A. That's what I put.

11 Q. Okay. So out of all of these eight factors cited by
12 Best, both the cost contributing factors and the cost
13 mitigating factors, very few of those actually impact
14 the operational risks.

15 Would you agree with that?

16 A. No, I don't think I would.

17 Q. So let's go through which ones you just said.

18 So a fallen vessel age does; right?

19 A. Right.

20 Q. And then you're not sure about technological advances
21 in navigation, but perhaps.

22 A. That's an operation -- that falls on the operational
23 side.

24 Q. Okay. Great. That's all I was asking before.

25 And then you said also investment in loss

1 prevention; right?

2 A. Yes. That would be on the operational side.

3 Q. Okay. And according to Best's report, these
4 navigational risks, these ones, are actually
5 mitigating factors that reduce claims costs; right?

6 A. No. I'm not sure they have a positive impact. If
7 you have a casualty, these don't necessarily reduce
8 claims costs. So there's two separate -- there's two
9 ways you can look at it. From an insurance
10 perspective, when we're looking at this, there is the
11 overall exposure, which is what Best is getting to.
12 The overall exposure for the worldwide shipping
13 market across multiple classes of vessels has
14 improved based on these factors.

15 But if -- as we've seen, when the casualties
16 occur, the amount of those claims are significantly
17 higher. So it's --

18 Q. Mr. McCarthy, if you can listen again to my question.
19 And it's driven off of the language that should be
20 right in front of you.

21 "Has a positive impact on claims costs."

22 A. Yes.

23 Q. Are you -- are you in agreement with that?

24 A. Yes.

25 Q. Thank you. That's all I'm asking.

1 Let's move now to your testimony on page 13. So
2 that's SM-01T, page 13.

3 And there you had some testimony regarding
4 Washington's financial responsibility law that was
5 passed in 2022; right?

6 A. Yes.

7 Q. Can you please identify the statute, the RCW citation
8 that your opinion is about?

9 A. I don't have that in front of me.

10 Q. You don't -- you don't know what that statute is that
11 you were writing about?

12 A. I don't have the statute in front of me,
13 specifically. It's not referenced in that.

14 Q. Well, if I tell you that the statute that you are
15 referring to in your testimony is RCW 88-40-020,
16 would that sound right to you?

17 A. Yes.

18 Q. Your testimony includes your opinion regarding the
19 levels of financial responsibility for oceangoing
20 vessels calling in the Puget Sound; right?

21 A. Yes.

22 Q. Is it your opinion that the State limited the
23 financial responsibility for oil tankers in the Puget
24 Sound to \$1 billion?

25 A. I don't know that I would say that they limited it.

1 I think they've made that the minimum that they want
2 to see. I don't think it's capped at a billion
3 dollars, but I'm not -- I'm not an attorney. We just
4 place the insurance to comply with the -- what's
5 required.

6 Q. So in the question that you received on that page,
7 the -- PSP's attorney included a lot of information
8 in that question for you for -- it says, "For oil
9 tankers, that level of financial responsibility was
10 increased to 1 billion."

11 But do you have any idea at all about whether
12 that is a limit or a minimum?

13 A. That is the minimum required amount.

14 Q. Are you familiar --

15 A. If there's anything -- sorry, go ahead.

16 Q. I didn't mean to step on your lines there. Go ahead.

17 A. I -- I don't believe that there's anything that
18 limits a significant spill to a billion dollars.

19 Q. Do you know whether there's any limit at all for
20 liability for damages from an oil spill?

21 A. I do not.

22 Q. Are you familiar with Chapter 90.56, RCW,
23 establishing the liabilities of parties that spill
24 oil?

25 MR. HAGLUND: Objection, Your Honor. I

1 think this calls for legal conclusions. He's said
2 he's an insurance provider, not a lawyer.

3 MS. DeLAPPE: I am asking if he's familiar
4 with it.

5 THE WITNESS: Not off the top of my head,
6 no.

7 JUDGE HOWARD: Well, let's -- sorry,
8 Mr. McCarthy. Let's -- just give me a moment to rule
9 on the objection.

10 I will allow the question because the testimony
11 does make an assertion about whether there's a legal
12 obligation to pay the costs.

13 Please proceed. Sorry.

14 MS. DeLAPPE: Thank you.

15 BY MS. DeLAPPE:

16 Q. Mr. McCarthy, I'll move on to a related question.

17 So you're not aware of anything where Washington
18 law imposes any limit on oil spill liability?

19 A. I'm not familiar with that area, no.

20 Q. Do you happen to know from your line of work that
21 requirements to demonstrate certificates of financial
22 responsibility and P&I club coverage or
23 self-insurance for vessels are supplementary and
24 complimentary to vessel liabilities under the strict
25 liability statutes? Do you -- do you know that?

1 A. I -- I do not know that. What I know is that our
2 clients, if they're an oil tanker and they need a
3 billion dollars worth of coverage, which we're able
4 to comply with through a P&I club entry, they also
5 have certificates of financial responsibility that
6 need to be complied with. And there's various means
7 of doing that. But how that relates to strict
8 reliability, I don't know.

9 Q. From your line of work, do you see that there's
10 any -- for the clients who have certificates of
11 financial responsibility where they indicate P&I
12 coverage, do you see that they have less need for
13 liability -- like, that they are expecting less
14 liability coverage needs?

15 A. Can you ask that again. I'm not sure what your --
16 what your question is.

17 Q. So do you understand that the -- that the P&I
18 coverage is just supplementary and complimentary to
19 the vessel liabilities that are there for other
20 reasons?

21 MR. HAGLUND: Objection. Vague. And
22 impossible to understand.

23 JUDGE HOWARD: Perhaps we can clarify that
24 question.

25 MS. DeLAPPE: Thank you. I will withdraw

1 that question.

2 BY MS. DeLAPPE:

3 Q. I'd like to move to SM-01T, page 7. And if you could
4 look at line 10. So in your testimony regarding the
5 effectiveness of statutory liability limits in
6 Washington and Oregon, you testified that
7 historically you have found them effective. But,
8 quote, "The situation has changed" significant in the
9 last -- "significantly in the last several years."

10 A. Well, I think the term "effective" is that they have
11 not been challenged; that they -- they have operated
12 to provide the effect of -- of limiting pilots'
13 liability.

14 Q. And you see there at line -- around line 10, it says,
15 in your experience, how effective they are. And then
16 you said, "I would have said these limits were very
17 effective. However, the situation has changed
18 significantly in the past several years."

19 A. That is correct.

20 Q. So on line 17, on that same page, you testify, "In
21 the last three years, there have been two cases, one
22 in federal court in Oregon and the other in federal
23 court in Washington, in which the underwriters for
24 the ship owner have sued the pilot and sought to
25 avoid the statutory liability limit by alleging that

1 acts of what many would consider to be ordinary
2 negligence are actually gross negligence or willful
3 misconduct"; right?

4 A. Yes.

5 Q. So in your description of the Oregon case involving
6 M/V Mumbai at page 8, line 12, you said, "Although
7 the Oregon Board of Maritime Pilots found pilot error
8 due to ordinary negligence, suspended the pilot's
9 license for 90 days, and required additional
10 training, the vessel's underwriters, in defending the
11 damages case brought by the Port of Kalama, impleaded
12 the pilot into the case by way of third-party
13 complaint, alleging that the pilot's actions
14 constitute gross negligence and willful misconduct";
15 right?

16 A. Okay. Can you wait a second? The document
17 disappeared.

18 Can you tell us what page we're talking about
19 because it went blank?

20 Q. Page 8, line 12. If the conjurers could make sure
21 that the documents are in front of him.

22 MR. HAGLUND: Ms. DeLappe, would you -- we
23 have a -- it's being displayed on a screen which is
24 very much quicker than paging through his testimony
25 and exhibits.

1 Do you have an objection to putting it on the
2 screen so you can see what he's seeing as well?

3 MS. DeLAPPE: I would like to actually just
4 say, Mr. -- if I may, Mr. McCarthy.

5 BY MS. DeLAPPE:

6 Q. Do you agree that the court in M/V Mumbai found that
7 there was a split in authority and it was a hard
8 legal question, especially given the dearth of case
9 law on these statutory provisions?

10 A. I don't know that I'm in a position to comment on
11 that. That feels like that's a legal question.

12 Q. Do you recall data requests on that topic?

13 A. I'm --

14 Q. Let me ask you. Did you read the M/V Mumbai decision
15 that you submitted as Exhibit SM-04?

16 A. Yes, I did.

17 Q. If you looked at that decision at page 7, you could
18 verify that the court said, quote -- that there was,
19 quote, "a split in authority" and that it was a hard
20 legal question, quote, "especially given the dearth
21 of case law in these statutory provisions"?

22 A. I accept that that's what the court said.

23 Q. The pilot in that case was Captain Boyce; right?

24 A. Yes.

25 Q. And that's B-O-Y-C-E.

1 A. Yep.

2 Q. If you can turn to Exhibit SM-04, and turn to page 5
3 of that order.

4 Are you there?

5 A. I believe so, yes.

6 Q. Thank you.

7 In the second paragraph, it reads, quote, "Boyce
8 argues that O.R.S. Section 776.540 automatically
9 limits a pilot's liability to the \$250 security,
10 except as to a single type of wrongdoing: Willful
11 misconduct. Put another way, Boyce argues that there
12 is a difference between gross negligence and the
13 palpably more serious willful misconduct."

14 So looking further at this order, if you can turn
15 to page 9. And the second line from the top, where
16 it reads, "Thus, this court finds, interpreting under
17 admiralty and Oregon law and looking at the text and
18 context of the statute, that O.R.S. 776.540 allows
19 for recovery up to \$250 for any damages flowing from
20 a proven act of gross negligence and does not limit
21 damages flowing from an act of willful misconduct";
22 right?

23 A. Correct.

24 Q. So didn't the court ultimately provide the pilot with
25 the interpretation of the law that he advocated for?

1 MR. HAGLUND: Objection. Calls for a legal
2 question.

3 JUDGE HOWARD: I will allow the question,
4 because this is an exhibit provided in his testimony
5 and he's testifying about the effects of this
6 decision on insurance rates.

7 THE WITNESS: It looks like they're
8 confirming what the statute actually says; that the
9 limitation applies to gross negligence, it does not
10 apply to willful misconduct.

11 BY MS. DeLAPPE:

12 Q. Wouldn't you agree that the liability limits in
13 Oregon were upheld and remain effective?

14 A. That's not my understanding of what the court found.

15 Q. Have Oregon's liability limits ever extended to acts
16 by a pilot that could be characterized as willful
17 misconduct?

18 A. Well, my understanding is that was the avenue that
19 they were pursuing. But it was never -- never went
20 to trial.

21 Q. Let's turn to page 11 of this decision. The
22 conclusion.

23 Do you see there that it says, "Because this
24 court cannot say as a matter of law that Boyce's
25 action did not rise to the level of willful

1 misconduct, the motion for summary judgment was
2 denied." And as I think you're saying, since it was
3 denied in this order, the order did not conclude the
4 litigation; right?

5 A. That is my understanding.

6 Q. So in fact, later, the parties settled this case;
7 right?

8 A. My understanding is they continue to pursue willful
9 misconduct to break the limitation, and it was on
10 that basis that it was determined to settle.

11 Q. And if you can turn to Exhibit SM-12X, at page 23,
12 and that's PMSA data request 601. And if you see on
13 that page, if you're with me, you admitted that the
14 case was dismissed by an order entered on
15 September 16, 2021, as a result of the settlement of
16 the parties?

17 A. Yes.

18 Q. So as a result of that settlement, the pilot did not
19 have to face any further claim of willful misconduct,
20 did he?

21 A. I don't believe so.

22 Q. And he also did not ultimately have to pay the \$250
23 within the Oregon liability limit for ordinary
24 negligence or gross negligence; correct?

25 A. I do not know what the settlement included, if the

1 \$250 bond that they post was somehow part of that
2 amount.

3 Q. If you could please turn to SM-18X, page 8 of that
4 exhibit. And that is a docket from that case. And
5 if you look there, you don't see anything about --
6 that -- and as you see, Mr. Haglund was involved in
7 this case -- you don't see anything about his -- the
8 pilot having had to pay any -- anything; right?

9 A. Well, I'd say that the pilot had to pay a substantial
10 amount because of the amount of the settlement, but I
11 don't see the \$250 referenced in there.

12 Q. So the -- in the SM -- the M/V Mumbai case resolved
13 in 2021.

14 The underwriter already included the additional
15 risks of the litigation by the time of the effective
16 date of the PSP policy we were looking at for
17 2022/2023; right?

18 A. This was a separate policy. So there's different
19 factors that are involved when it comes to
20 underwriting.

21 Q. So for a policy that's for 2022/2023, would
22 underwriters have already incorporated any additional
23 risks of litigation represented by this case that had
24 settled in 2021?

25 A. Yes.

1 Q. So the rates in 2023/2024 at SM-15X are nearly the
2 same as the prior year. So were those risks of the
3 defense costs already built into that premium for the
4 prior year then?

5 A. The group that's sustained the loss, their premiums
6 were impacted dramatically by the size of that claim.

7 Other pilot groups were impacted by the perceived
8 change in exposure of P&I clubs trying to break
9 limitation becoming now a standard operating
10 procedure, which now creates additional exposure to
11 the groups and the underwriters.

12 Q. Thank you, Mr. McCarthy.

13 So these -- at SM-15X, page 1, those are already
14 incorporated into these premiums, right, those
15 additional risks?

16 A. Yes. For --

17 Q. Thank you.

18 A. For that renewal.

19 MS. DeLAPPE: I have no further questions.

20 JUDGE HOWARD: Any redirect?

21 MR. HAGLUND: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. HAGLUND:

24 Q. Mr. McCarthy, I want to stick with this Mumbai case
25 for a few -- a minute or two and ask you some

1 questions.

2 If we could go to another part of that summary
3 judgment decision from 2021, the fall of 2021, and go
4 to SM-04 at page 10.

5 And if we look at the last full sentence of the
6 partial paragraph at the top there -- and if you
7 could --

8 MR. HAGLUND: Mr. Crandall, if you could
9 display this so that all can see what we're calling
10 out from that opinion.

11 Those three -- last three lines of that first
12 partial paragraph.

13 So, actually, you need to get me up to the
14 other line above that as well.

15 BY MR. HAGLUND:

16 Q. Here you see language used by the federal judge in
17 Oregon that is providing a definition of willful
18 misconduct. And do you recall, Mr. McCarthy, given
19 your involvement in this case, that the concern was
20 that the definition of willful misconduct could
21 also --

22 MS. DeLAPPE: I would object to counsel
23 explaining to the witness what the concern was. And
24 ask that he ask what Mr. McCarthy knows.

25 JUDGE HOWARD: I am going to grant the

1 objection. It seemed that we were suggesting an
2 answer.

3 BY MR. HAGLUND:

4 Q. Okay. What's your understand, Mr. McCarthy, of the
5 concern about going into trial after this summary
6 judgment decision had come down?

7 A. Well, I think there's several. The biggest is that
8 the policy that we have is extremely broad, but the
9 exclusions that are in it do not include gross
10 negligence. But they do include willful, wanton, or
11 intentional acts, but with some exceptions for
12 intentional acts made under emergency circumstances.
13 And if the finding of willful misconduct was -- was
14 upheld, the pilot wouldn't have insurance. And it
15 would create, effectively, case law where
16 recklessness became the new standard for willful
17 misconduct, which then created exposures, not just
18 for this group, but for multiple pilot groups that we
19 represent.

20 Q. Thank you. And you mentioned that the group involved
21 saw a significant increase in its policy as a result
22 of the result in this case, the settlement.

23 And Captain Boyce, what pilot group was he a
24 member of?

25 A. He was a member of the Columbia River Pilots.

1 Q. So when you refer to "this group" seeing a
2 significant increase, were you referring to the
3 Columbia River Pilots?

4 A. Correct.

5 Q. And you mentioned also that all pilot groups that you
6 do work for or serve as the insurance -- marine
7 insurance broker for saw increases in their costs.
8 If we could put up Exhibit MM-81X.

9 Is -- is this exhibit something that you prepared
10 in response to a PMSA data request?

11 A. Yes.

12 Q. And what -- what are we seeing on this recap sheet
13 that you prepared?

14 A. Well, what you're seeing is both the impact of a very
15 hard insurance market, where rate increases are going
16 up. At the same time, you're also seeing an impact
17 in -- an increase in the perceived exposure as it
18 relates to pilot liability, because these renewals
19 both looked at the Boyce case and the Levant case.
20 And the point being, that's a snapshot. That doesn't
21 mean that the increases have stopped.

22 Q. And when you refer to the Levant case, which case is
23 that?

24 A. That's the Puget Sound case where they're actually --
25 break limitation as well.

1 Q. And that's pending in federal court in Seattle at
2 this time?

3 A. Correct.

4 Q. And if you look at the progression of rates on a per
5 pilot basis, which show on the second to last line
6 there, what would you observe about the trend over
7 the last five years?

8 A. It's just been a straight upward trajectory.

9 Q. And is this reflective of exposures that pilots have
10 during their work as pilots?

11 A. Yes.

12 Q. Now, you were asked -- let's turn now -- or let me
13 ask one other question.

14 You mentioned -- or you were asked in your
15 prior -- in the cross about loss of income insurance.
16 And we see a decline in that over this six-year time
17 frame.

18 Why was the amount reduced based -- based upon
19 what you know of your discussions with the Puget
20 Sound Pilots, why was the amount reduced?

21 A. Because of the last rate hearing. There was a
22 significant drop in the income, and that's what they
23 asked us -- they asked us to lower that to 321,000 in
24 2021/2022.

25 Q. And you are the insurance -- marine insurance broker

1 for the Columbia River Pilots, are -- Columbia River
2 Bar Pilots, are you not?

3 A. Yes.

4 Q. What do they maintain for this year, their license
5 defense and lost income insurance -- or lost income
6 insurance coverage at?

7 A. Technically, I'm not supposed to be disclosing. But
8 we've provided that information.

9 Q. I think it's referenced in Captain Jordan's
10 testimony, so if you can --

11 A. Okay. They're over 500,000. I don't have it off the
12 top of my head.

13 Q. For 2023?

14 A. Yes.

15 Q. Okay. Now, if you -- you were asked about --

16 JUDGE HOWARD: I was concerned that that was
17 a bit of counsel testifying there. So let's be
18 careful about that.

19 MR. HAGLUND: Yes, Your Honor.

20 BY MR. HAGLUND:

21 Q. You were asked about the effect of technology on
22 pilotage risk. Looking at it from a big picture
23 standpoint, Mr. McCarthy, how would you -- what are
24 your observations about the effect of increases in
25 technology aboard ships being piloted on pilotage

1 risk?

2 A. That -- it gets a little bit beyond my area of
3 expertise in terms of the various pilots and the
4 nature of the navigation. So I'm not sure that I can
5 necessarily speak to that unless you're talking
6 about from an insurance perspective. You know, we
7 know that pilot groups utilize portable pilot units
8 rather than relying on vessel technology for
9 navigation. Things of that nature have evolved over
10 the last 10 or 15 years.

11 Q. Let me ask the question a little differently.

12 You were -- you acknowledge that there's more
13 tonnage on the world's oceans today than there was 10
14 to 15 years ago?

15 A. Right.

16 Q. From an insurance loss perspective, is that newer
17 tonnage generating lower levels of claims?

18 A. Not necessarily. I think -- while they -- incidents
19 may be down, the size of claims has increased
20 significantly. Just inflation, the costs -- the
21 ability to -- you know, whatever it costs to repair a
22 dock today is significantly higher than it was even
23 five years ago. Pollution spills around the world.
24 More jurisdictions are taking much closer to a U.S.
25 approach to liability and cleanup and fines and

1 penalties and things of that nature.

2 Q. Are you familiar with the Golden Ray casualty off the
3 coast of Georgia?

4 A. Just from what we read in the news and the insurance
5 publications.

6 Q. Do you have any observations about the effect of
7 technology as it pertained to that casualty?

8 A. Well, it didn't seem to really work. My
9 understanding was there was a vessel that had just
10 come out of dry dock and basically flipped over in
11 calm seas, which should not happen. And my
12 understanding from what I read is it was a ballast
13 water issue that affected and caused that.

14 Q. Now, you were also asked about Washington's financial
15 responsibility laws as they pertain to oil spills.
16 And I want to ask you some questions about that area.

17 When it comes to a vessel -- let's say an oil
18 tanker or any foreign flag ship that's coming into
19 Puget Sound or U.S. waters, is there a federal
20 requirement regarding a certificate of financial
21 responsibility?

22 A. Yes, there is.

23 Q. And what's your understanding about how a vessel
24 obtains that certificate in order to be sailing in
25 the U.S. waters?

1 A. So for any vessel over 300-gross tons that carries
2 fuel. So you could have tugs, you could have fishing
3 vessels, they need to have a federal COFR,
4 certificate of financial responsibility. Most of
5 those vessels will get that through insurance,
6 whether it's Water Quality Insurance or Safe Harbor.
7 And they provide them both the insurance and the
8 guarantee to the Coast Guard.

9 For Blue Water ships, their pollution insurance
10 is primarily through P&I clubs. The P&I clubs refuse
11 to act as a guarantor, and they have done that going
12 back to when OPA 90 and the federal COFRs came into
13 play. They said we are not a guarantor because that
14 is not the structure of how our system works. So
15 they had to create a different scheme, if you will.

16 Some vessel owners may still buy insurance. It
17 gets to be very expensive because you're buying
18 insurance that you already have through your P&I
19 club. So there are facilities, Shoreline is the one
20 that comes to mind, where they offer surety. Which
21 is basically, they put up a guarantee, you pay money,
22 much less than insurance. They put up the guarantee
23 and the guarantee satisfies the federal Coast
24 Guard -- the federal COFR requirement.

25 Q. So these vessels that elect to use Shoreline to

1 secure a surety bond, if they have a major casualty
2 and were to abandon the vessel, say a single shell
3 corporation owning a single vessel were to abandon
4 the ship because of the size of the loss, would the
5 surety bond have to pay the federal -- federally
6 required limit?

7 A. Yes.

8 Q. And under the -- how is the -- you mentioned the P&I
9 clubs have refused to provide these sorts of surety
10 bond guarantees.

11 Could you briefly describe what is required in
12 order for a P&I club to pay an insurance claim of one
13 its members?

14 A. Well, P&I clubs operate slightly different from
15 normal insurance in that they are on a -- what's
16 known as a pay-to-be-paid basis in a pure indemnity
17 system, where the individual member -- the individual
18 ship owner must first pay the loss and then be
19 reimbursed by their club, be indemnified by the club.

20 In a situation where a vessel owner goes bankrupt
21 or just walks away from a claim and does not pay in
22 the first instance, the P&I clubs are not going to
23 step in and cover those claims on a first-party
24 basis.

25 Q. So based on your background and experience in the

1 marine insurance business over 30 years, do you --
2 are you able to describe that portion of the foreign
3 flag fleet that carries some risk, based on your
4 experience of potential abandonment of the vessel, in
5 the event of a catastrophic loss like an oil spill?

6 A. When I look at it, the exposure is going to be
7 primarily bulkers, vessels, bulk ships, trampers,
8 that are owned in kind of a single shell corporation.
9 And it basically -- each vessel, they might have ten
10 vessels a ship owner, whether in Greece or other
11 places -- the joke is always Greek ship owners -- but
12 in the event of a significant casualty, they just
13 take a razor blade, scrape the name of the company
14 off the window, and off they go. That would be the
15 exposure, where there was a ship owner, single entry.
16 There's no other assets associated with that company.
17 And the owner just decides to walk away from the
18 loss.

19 Q. Now, Washington passed a statute requiring vessels
20 of -- carrying certain levels of fuel or oil to put
21 up certificates of --

22 MS. DeLAPPE: I will object to counsel
23 instructing the witness about what statutes
24 Washington has adopted based on his prior testimony,
25 and just ask that counsel ask him what he knows.

1 MR. HAGLUND: Okay. I'll rephrase the
2 question.

3 BY MR. HAGLUND:

4 Q. Hypothetically, I want you to assume that Washington
5 law requiring certificates of financial
6 responsibility allows a vessel with P&I club
7 insurance meeting the required amount to have an
8 exemption from posting a certificate of financial
9 responsibility with a surety.

10 Given that assumption, is there -- what's your
11 observation about the risk in the event the vessel
12 was abandoned?

13 A. Well -- and I don't know exactly what those -- the
14 limits are for bulk carriers versus oil tankers. I
15 mean, I would be surprised if there's a single shell
16 oil tanker company out there. But the risk would
17 still be the same.

18 I mean, just because the clubs can evidence a
19 billion dollars in coverage, doesn't guarantee that
20 there's a billion dollar insurance there, unless
21 there is a ship -- standing in front of that and
22 taking on the obligations to pay in the first
23 instance and then be indemnified.

24 Q. Have you personally observed the P&I clubs enforcing
25 the pay-to-be-paid requirement?

1 A. Yes. On a regular basis. Where, I mean, it's
2 almost -- in some cases, it's our client basically
3 cuts a check, photocopies that shows that that
4 check is -- has been sent, and then the clubs will
5 then put the money in their account to reimburse
6 them. But it creates a very clear paper trail of our
7 client, our vessel owner paying in the first
8 instance.

9 Q. Because the clubs absolute -- they insist that that
10 payment be made before they reimburse?

11 A. Yes.

12 Q. Okay. Under their indemnity policy program?

13 A. Yes.

14 Q. Okay. When it comes to -- how many pilot groups on
15 the West Coast do you provide the marine insurance
16 brokerage services for?

17 A. Coos Bay, Columbia River Bar, Columbia River, Puget
18 Sound, and SEAPA. Five.

19 Q. And SEAPA is Southeast Alaska Pilots?

20 A. Yes.

21 Q. And when it comes to -- if a pilot somewhere in the
22 Unites States has a significant incident or -- or you
23 have situations where limitations on liability are
24 being challenged, is -- what's your experience with
25 respect to the size of the group of underwriters who

1 are willing to consider writing insurance for pilot
2 groups?

3 MS. DeLAPPE: I would object that this is
4 beyond the scope of my cross.

5 JUDGE HOWARD: I'm going to grant that. I
6 don't believe the cross was getting into national
7 availability of insurance for pilots.

8 MR. HAGLUND: Okay. That's all I have, Your
9 Honor. I've concluded my redirect.

10 JUDGE HOWARD: All right. Do we have any
11 questions from the bench for this witness?

12 CHAIR DANNER: No, Your Honor.

13 COMMISSIONER RENDAHL: No, Your Honor.

14 COMMISSIONER DOUMIT: No, Your Honor.

15 JUDGE HOWARD: All right. Thank you all.

16 Mr. McCarthy, thank you for your testimony.
17 You are excused from the remainder of the hearing.

18 We are going to move next to McNeil.

19 MS. DeLAPPE: Your Honor, I do have a
20 question, just as far as our scheduling. I am
21 perfectly fine with proceeding with McNeil and then
22 Wood and then Lough, as we discussed earlier. But I
23 do note that seems to put us at a late lunch, which
24 is absolutely fine with me. I just wanted to make
25 sure that that will be all right with everyone else,

1 since we do want to make sure that Lough's testimony
2 is not broken up. Thank you.

3 JUDGE HOWARD: Yes. I -- I -- I also want
4 to be mindful that, although we are willing to stay
5 late today, that we don't embark on a long journey
6 starting after lunch that will lead -- keep us here
7 late into the evening. So I -- I think --

8 MR. HAGLUND: Your Honor, I -- we're going
9 to -- we were going to call two 15-minute witnesses
10 and then Mr. Lough. I know she's -- Ms. DeLappe has
11 an hour and a half for Mr. Lough. We have a group
12 here where the lunch comes in during the lunch hour.
13 I guess I have issues with not taking a half-hour
14 lunch break sometime during the noon time frame.

15 JUDGE HOWARD: I would -- I would like to
16 take a reasonable lunch break. But I -- I'm going to
17 consider this as we maybe turn to McNeil first. But
18 go ahead.

19 MS. DeLAPPE: I think that this will just
20 put us at lunch at 12:40 if my timing estimates are
21 correct.

22 JUDGE HOWARD: All right. Is that agreeable
23 to you, Mr. Haglund?

24 MR. HAGLUND: Well, the only concern is I
25 think the lunch that would be coming in at noon here

1 is going to get rather cold by then. But we can live
2 with that.

3 JUDGE HOWARD: What would you say to just
4 taking Lough -- am I saying that correctly,
5 David Lough first?

6 MR. HAGLUND: We could -- what we could do
7 is -- I was hoping Mr. McNeil could get on as he has
8 a 1 p.m. plane to catch back to Virginia. We could
9 push Mr. Wood to after Lough.

10 JUDGE HOWARD: Is that agreeable?

11 MS. DeLAPPE: Absolutely.

12 JUDGE HOWARD: All right. Let's proceed
13 with McNeil for now. I'm going to keep mulling this
14 over. And I'm just going to be mindful of not --
15 trying to avoid being here until a very late hour
16 tonight. All right.

17 Mr. McNeil, can you hear and see me all right?

18 THE WITNESS: I can. Yes.

19 JUDGE HOWARD: All right. Would you please
20 raise your right hand, and I'll swear you in.

21 * * * * *

22 Bruce McNeil, having been first duly sworn, was
23 examined and testified as follows:

24 THE WITNESS: I do.

25 JUDGE HOWARD: All right. Mr. Haglund,

1 would you please introduce the witness.

2 MR. HAGLUND: Mr. McNeil, did you prepare
3 written testimony, both original and oral -- rebuttal
4 testimony in this case?

5 THE WITNESS: I did.

6 MR. HAGLUND: And is it true and correct to
7 the best of your knowledge?

8 THE WITNESS: It is.

9 MR. HAGLUND: And how many years have you
10 been practicing as a pension law specialist?

11 THE WITNESS: About 40 years.

12 MR. HAGLUND: I tender the witness for
13 cross.

14 JUDGE HOWARD: All right. PMSA, you may
15 proceed.

16 MS. DeLAPPE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. DeLAPPE:

19 Q. Good morning or good afternoon. Your times in --
20 you're in Seattle now; right?

21 A. I am. Yes.

22 Q. All right. Thank you.

23 A. Yeah. We're behind. But, yes.

24 Q. Well, good morning, Mr. McNeil.

25 If you could please turn to Exhibit BJM-05. And

1 I believe you'll recognize that this is a letter that
2 you wrote on February 17, 2023, to the Internal
3 Revenue Service?

4 A. This is to the Department of Labor.

5 Q. BJM-05?

6 A. I'm sorry. You're correct. That is to the IRS.

7 Q. I'm glad we're on the same letter then. Great.

8 So you submitted this with your rebuttal
9 testimony; right?

10 A. I did.

11 Q. And if you can turn to page 2 of this exhibit, you'll
12 see a list there where you attached -- well, starting
13 on page 1, you attached five exhibits to this letter
14 to the Internal Revenue Service?

15 A. That -- those are exhibits that I will attach to that
16 letter when I submit the letter.

17 Q. So the letter is dated February 17, 2023, but you
18 have not mailed it yet?

19 A. I have not.

20 Q. So when you mail this letter, are you planning on
21 updating the date on the first page?

22 A. Yes. The current date of the mailing of the letter.

23 Q. So Exhibit D on that letter says, "A copy of the
24 Puget Sound Pilots Association Multiple Employer
25 Defined Benefit Pension Plan."

1 Does that document exist?

2 A. It does not.

3 Q. If you -- and so also Exhibit E, "A copy of the Puget
4 Sound Pilots Association Trust Agreement."

5 Does that document exist?

6 A. It does not.

7 Q. Did you state anywhere in your testimony that these
8 letters were not letters that you were actually --
9 that you had sent?

10 A. These letters will be sent at the time that there's
11 approval of that defined benefit multiple employer
12 plan.

13 Q. Do you --

14 A. And then I can draft the plan, draft the trust, and
15 submit both along with this letter.

16 Q. So do you recognize that when you submit an exhibit
17 that has a specific date well before the testimony
18 date, it doesn't say insert date here? It's just
19 February 17, 2023, that that might lead one to think
20 that this letter had actually been sent that day?

21 A. Well, it would be exactly the letter that I will send
22 on the date I send it.

23 MR. HAGLUND: Your Honor, I'm going to
24 object to this line of questioning because
25 Mr. McNeil, in his rebuttal testimony, page 3, stated

1 that both letters were drafts of letters to be --
2 were drafts.

3 MS. DeLAPPE: And that is what I'm asking
4 Mr. McNeil, is if he made it clear.

5 THE WITNESS: Well, I did in my rebuttal
6 testimony. I said -- I think I made it pretty clear.

7 MS. DeLAPPE: Okay. I think we are waiting
8 for a ruling on that objection.

9 JUDGE HOWARD: I'll allow the question.
10 It's up to counsel to explore this at this point.

11 MS. DeLAPPE: Thank you.

12 BY MS. DeLAPPE:

13 Q. And I believe Mr. Haglund has helped you in providing
14 the answer for you, Mr. McNeil.

15 So if we could please turn to discussing the
16 trust.

17 Have you discussed the creation of the trust with
18 stakeholders in the pension workshop process or in
19 any other context?

20 A. It may have come up during the earlier discussions we
21 had with the mediator.

22 Q. And you're not sure?

23 A. I cannot recall how deeply we got into this topic of
24 the actual planned document and the actual trust
25 agreement.

1 Q. And when you are referring to "the mediator," are you
2 referring to the mediation in which you were present,
3 personally?

4 A. Yes.

5 Q. When was that mediation?

6 A. That occurred maybe October, November of 2022.

7 Q. November of 2022.

8 So there was no point at which you've disclosed
9 anything about the pilot -- Puget Sound Pilots
10 Association forming a trust as part of the pension
11 before then?

12 A. Well, a trust does have to be formed under
13 Section 501(a) of the Internal Revenue Code to be
14 used related to qualified defined benefit pension
15 plan under 401(a) of the Internal Revenue Code, both
16 together. So when I make the --

17 Q. Mr. McNeil, could --

18 A. -- there's only one other way it could be done, and
19 that's with a trust agreement to hold the assets for
20 the plan document. The plan document just describes
21 the terms of the benefits provided under that plan.
22 And the trust agreement is used to hold the assets to
23 fulfill the promises under that plan document.

24 Q. Could you please turn to Exhibit BJM-01T, that's your
25 testimony, and turn to page 5?

1 A. Yes.

2 Q. On that page, line 4, could you just confirm that you
3 testified that PSP could establish a plan, a plan
4 with benefits substantially identical to its current
5 farebox plan?

6 A. Correct.

7 Q. And the current farebox plan provides a retiree a
8 benefit equal to 1.5 percent of the retired pilot's
9 retirement base per year of service; is that right?

10 A. Correct.

11 Q. So in the plan you submitted to the -- you plan to
12 submit an identical letter to -- for the document --
13 the letter that we looked at at the beginning,
14 BJM-05.

15 And for the parallel letter that you were
16 preparing to send to the Department of Labor, if I
17 could have you turn to that, BJM-06.

18 A. Yes.

19 Q. If you could turn to page 4 of that letter, and let
20 me know when you're there.

21 A. Yes.

22 Q. So do you see there that it says "1.864 percent of
23 the retired pilot's retirement base"?

24 A. Yes.

25 Q. So you're actually proposing a different percentage

1 than is in the current farebox plan?

2 A. The testimony was I could produce a plan that
3 provides that essentially identical benefits on the
4 plan. And if you apply the taxable provisions to
5 that plan under 401(a)(17), the compensation limit,
6 that's adjusted every year and it is now currently
7 \$330,000, which would be not equal to the current pay
8 of the pilots.

9 So to adjust for that, to create the
10 substantially same benefit of \$150,750, you adjust
11 the accrual factor from 1.5, which has been in play
12 for a long time, to 1.864. That produces exactly the
13 same benefit.

14 Q. So that -- you're saying that the 1.5 percent under
15 the current farebox plan will exactly match, at all
16 times, the 1.864 percent under your proposed plan?

17 A. The accrual factor would be by the base pay of the
18 pilot, times years of service, which is the formula
19 currently in place for the farebox plan. Base pay
20 times 1.5 percent times years of service. I would
21 just change the accrual factor slightly to
22 1.864 percent and produce the same benefit. It's
23 what is being paid right now out of the farebox plan.

24 Q. Mr. McNeil, in your original testimony, did you
25 discuss limits under the Internal Revenue Code

1 Section 401(a)(17)?

2 A. I did in my rebuttal testimony.

3 Q. Excuse me, I am referring to your original testimony.

4 A. I did not.

5 Q. Okay. And do you recall that after your original
6 testimony, that PMSA specifically asked you about
7 this?

8 A. I do not recall.

9 Q. Could you please turn to Exhibit CN-4, and let me
10 know when you're there.

11 A. Oh, I read his -- his testimony. He does raise the
12 limitations under the 401(a) of the Internal Revenue
13 Code.

14 Q. Excuse me. This is not -- Exhibit CN-4 is not
15 testimony.

16 Do you see that those are PMSA data requests to
17 you?

18 MR. HAGLUND: Which page?

19 BY MS. DeLAPPE:

20 Q. And to Mr. Wood.

21 If you look at page 1 of the exhibit, do you see
22 that these are about pilot retirement? They're data
23 requests that were propounded by PMSA on the topic of
24 data -- pilot retirement.

25 Do you see that?

1 A. I do.

2 Q. And if you could turn, for example, to page 15, do
3 you see here that there is a request to admit the
4 defined benefit plan, subject to that same code
5 section, limits compensation that may be taken into
6 account in determining plan benefits?

7 A. I see that.

8 Q. And do you see that there was no response provided?

9 A. I see that there was a response. "PSP objects on the
10 same basis as set forth in response to data request
11 472."

12 Q. Yeah. Thank you.

13 Did you ever see this request? Was this ever
14 presented to you?

15 A. I did see this.

16 Q. Can you please --

17 A. And I did respond to it in my testimony, too.

18 Q. Did you respond to it when the request was provided
19 to you?

20 A. Subsequent to the request.

21 Q. So you see here on page 1 of this exhibit that the
22 request was provided on January 6, 2023?

23 A. Yes.

24 Q. And you provided a response in your rebuttal
25 testimony?

1 A. I did.

2 Q. And you did not provide any response before then, did
3 you?

4 A. There is a response there. It says, "PSP objects to
5 providing any legal opinions on the grounds of
6 attorney/client privilege, which was never waived."

7 Q. So you think that an objection is a response. You're
8 a lawyer, aren't you, Mr. McNeil?

9 A. Yes, I am. Licensed in six different jurisdictions.

10 Q. Thank you. I'm in five.

11 So let's turn to page 25.

12 A. Almost.

13 Q. And do you see here that this is also asking about
14 that same code section and we get the same type of
15 response?

16 A. Yes.

17 Q. And if you turn to page 48, do you see here that this
18 is asking about that same code section and that we
19 get the same, quote, "response"?

20 A. Correct.

21 Q. And if you turn to page 66, same thing; right?

22 A. The -- yes. Yes.

23 Q. So turning back to your letter at BJM-06, the letter
24 to the Department of Revenue -- I mean, excuse me,
25 the Department of Labor, page 4.

1 Here you provide the very information that PMSA
2 was asking about under this -- the limits for this
3 code section; correct?

4 A. I -- I at least mention 401(a)(17), yes. I went into
5 further detail on 415(b), the limit on benefits that
6 can be paid, which is 265,000, and this compensation
7 limit in the rebuttal testimony of 330,000 currently
8 in 2023.

9 Q. And so, Mr. McNeil, just look at this page 4. You
10 stated here that the pilots -- the benefit would be
11 limited by Section 401(a)(17) of the code; correct?

12 A. Not the benefit. As I said, it's the compensation
13 limit.

14 Q. Yes.

15 A. Not the benefit limit. They are two different
16 limits.

17 Q. It's been a while since I took my ERISA class, but
18 thank you.

19 A. Yeah.

20 Q. Let's, then, turn to -- in your initial testimony,
21 your original testimony, you -- it's BJM-01T, if you
22 would like to look at the page, it's page 5. You
23 testified that recently issued final regulations had
24 opened up the opportunity to pursue a defined benefit
25 multiple employer plan for PSP?

1 A. Correct.

2 Q. And you did not cite the regulations in your original
3 testimony or provide them as an example -- exhibit,
4 did you?

5 A. I did not.

6 Q. If you could please turn to BJM-9X, are these the
7 regulations you were referring to?

8 A. They are.

9 Q. And would you agree with me that the commentators --
10 actually, if you can just turn to page 5 of this
11 exhibit. I'll quote the commentators -- the various
12 commentators had mentioned, quote, "Life, disability,
13 and defined benefit pension plans in particular after
14 thoughtful review of these comments, however, the
15 final rule is limited to defined contribution plans";
16 right? Is that --

17 A. That is correct.

18 Q. In your letter to the Department of Labor, you do not
19 request an opinion on whether a defined benefit
20 multiple employer plan would be permitted under this
21 final rule; correct?

22 A. I talk -- I talked to the author of these
23 regulations, Francis Dean. And she advised that the
24 letter would be -- an advisory opinion could be
25 issued --

1 Q. May I just state, Mr. McNeil, that that's not
2 answering my question, and you will have an
3 opportunity on redirect.

4 I am asking whether the letter asks for an
5 opinion about whether the final regulations cover
6 what you're asking for.

7 MR. HAGLUND: Your Honor, I have to object
8 to Ms. DeLappe interrupting the witness in a -- in
9 the middle of an answer because she interprets it as
10 not completely responsive. He was making a very
11 appropriate explanation of what he'd done.

12 MS. DeLAPPE: It was just a question about
13 what's in the letter.

14 JUDGE HOWARD: She was asking about the
15 contents of the letter. From what I heard, the
16 answer was not about what the letter was requesting
17 or stating. She could have moved to strike as
18 nonresponsive. And that was essentially what she was
19 doing.

20 MS. DeLAPPE: Thank you.

21 I see that my time has expired. No further
22 questions.

23 JUDGE HOWARD: Any redirect?

24 MR. HAGLUND: Yes.

25 REDIRECT EXAMINATION

1 BY MR. HAGLUND:

2 Q. Mr. McNeil, could you explain what you learned about
3 the -- could you relate for the Commissioners the
4 information you wish to relay just a few moments ago
5 regarding this topic?

6 A. Yes. I spoke with Francis Dean. Right at the bottom
7 of the page: For further information contact. And I
8 did. I called her because I had testified before the
9 Department of Labor on at least two occasions. I do
10 know the Department of Labor. I had sought advisory
11 opinions before. And to give an advisory opinion,
12 you have to be narrow in focus, and that's what she
13 told me.

14 So that is why the letter is written the way it
15 is, requesting two opinions: One that the Puget
16 Sound Pilot Association is a bona fide association
17 that can sponsor an employee benefit plan under
18 Section 3(5) of ERISA, and based upon the unique
19 nature of the association and the regulations issued
20 under these final regulations in 2019, it would -- it
21 would fit perfectly -- with -- within the guidance --
22 association that could sponsor an employee benefit
23 plan -- multiple employer -- or benefit plan; and
24 that the pilot could form LLCs and be a single
25 self-employed participating employer, a working

1 employer, and fit uniquely within these regulations
2 to be that worker/employer and satisfy the
3 requirements under Section 401(c) of the Internal
4 Revenue Code to be participants in a tax-qualified
5 plan under Section 401(a) of the Internal Revenue
6 Code.

7 Q. Now, with respect to your rebuttal testimony, if we
8 can go to BJM-04T at page 3. Are you displaying it
9 for everybody?

10 If we could call out that first Q and A there.

11 You're asked the question, "In your opinion, is
12 there any legal impediments to a smooth transition of
13 PSP's existing pay-as-you-go defined benefit plan to
14 an ERISA-qualified, multiple employer defined benefit
15 pension plan that provides exactly the same
16 retirement benefit to retirees as PSP's existing
17 unfunded pension plan?"

18 And your answer is there, "no."

19 A. No.

20 Q. And you refer in the answer to the need to obtain to
21 two determination letters, one from IRS and one from
22 the Department of Labor.

23 You state at the end that you're confident that
24 both would be issued.

25 Could you please explain why you believe that to

1 be true.

2 MS. DeLAPPE: Objection. Outside of the
3 scope of cross. I did not ask for why -- anything
4 like this.

5 JUDGE HOWARD: I'm going to grant the
6 objection.

7 BY MR. HAGLUND:

8 Q. If you -- let me ask you this.

9 If we scroll down to the next Q and A, the
10 question asks "Have you prepared drafts?" And you
11 were asked questions about those drafts.

12 Why the letter's only in draft form?

13 A. Well, we need to get through this process, and then
14 to draft the plan document to provide for the benefit
15 formula that I have outlined of base pay times
16 1.864 percent times years of service. Those -- that
17 formula does have to be in the final draft of the
18 multiple employer pension plan. So to get to that
19 draft, we have to get certain approvals.

20 But I am very confident that once that plan has
21 been drafted, the letter can be sent to the Internal
22 Revenue Service for a request for a determination
23 letter on the tax qualified status of that plan.

24 I spoke to a friend of mine, Roger Keenly
25 [phonetic], with the Office of Chief Counsel with the

1 Internal Revenue Service. He did not have any
2 reservations about a defined benefit pension plan
3 that could be drafted satisfy the requirements -- the
4 applicable requirements under Section 401(a) of the
5 Internal Revenue Code and get a favorable IRS
6 determination letter.

7 The IRS -- and I used to work there too at
8 the employee plans technical and actuary division.
9 And with the Internal Revenue Service the goal is to
10 make sure all these plans are tax qualified for the
11 benefit of the participating employees.

12 So we routinely drafted -- we saw drafts of
13 plans, issued tax-qualified letters, and then those
14 plans can be adopted by employers.

15 Q. Is it fair to say it would be premature to send these
16 letters before the UTC Commissioners have made a
17 decision on the pension transition issue?

18 A. It is absolutely premature because these -- these
19 plans have to have the requisite information to get a
20 determination letter.

21 MR. HAGLUND: No further questions.

22 JUDGE HOWARD: Do we have any questions from
23 the bench for this witness?

24 CHAIR DANNER: No, Your Honor.

25 COMMISSIONER DOUMIT: I have questions, Your

1 Honor. Thanks.

2 JUDGE HOWARD: Please proceed.

3 COMMISSIONER DOUMIT: I want to follow up on
4 this line that you -- both counsel have sort of gone
5 at here.

6 On the determination letters from the IRS and
7 from the -- from labor, and those are at BJM-05 and
8 06 in your rebuttal testimony, how long will those
9 opinions take to turn around in both places, once
10 you've submitted a complete letter and application?

11 THE WITNESS: The IRS letter could take a
12 little longer than the Department of Labor letter.
13 It depends. The IRS has a priority status. If
14 you're terminating a plan, that letter has priority
15 status over a tax-qualified plan letter.

16 But a tax-qualified plan letter for an initial
17 qualification of that plan has a priority status that
18 may be a little lower than the determination, but is
19 very high. So hopefully get the plan drafted, submit
20 the letter, and hopefully in less than a year, we get
21 a favorable determination from the Internal Revenue
22 Service.

23 COMMISSIONER DOUMIT: How about the
24 Department of Labor?

25 THE WITNESS: That might be faster, because

1 the Department of Labor issued those final
2 regulations in 2019. Francis Dean seemed to think
3 that seeking advisory opinions about these multiple
4 employer pension plans would be at a high priority
5 for the department because the department does -- and
6 congress -- does want to encourage these multiple
7 employer pension plans because they permit small
8 employers -- and here we have small employers,
9 one-person employers, with each of the pilots -- to
10 form a multiple employer plan and then submit for
11 opinions so the Department of Labor can issue those
12 opinions and guidance. So that works from the
13 Department of Labor's point of view too. They are
14 then in a position to issue guidance on particular
15 issues.

16 COMMISSIONER DOUMIT: So is it possible --
17 you mentioned advisory opinions. Are those based
18 on -- just an advisory opinion, that means a
19 non-binding opinion. That doesn't mean a provisional
20 opinion. My question would be: Can you get a
21 provisional opinion from the IRS or the Department of
22 Labor on -- on the determination on these plans?

23 THE WITNESS: Well, the advisory opinion
24 would apply exactly to this particular -- these
25 particular questions for this particular plan. And

1 that is what you want. You want an advisory opinion
2 exactly on your fact.

3 COMMISSIONER DOUMIT: Okay. I guess my
4 question, then, is: You stated you thought it would
5 be premature to apply now, before the plans are
6 approved or before the UTC applies it. Is that
7 necessarily the case? Can I ask the IRS, for
8 example, whether it will approve a plan and go -- in
9 order to save the time, save the year, right, is it
10 possible to provisionally ask for the approval of
11 this plan?

12 THE WITNESS: The -- it doesn't really work
13 that way, not in my experience with the Internal
14 Revenue Service. They need to issue rulings on
15 exactly what they will issue rulings on. Not -- and
16 it's not hypotheticals. It's not provisional.
17 Because unless it's in fine print and written down,
18 the IRS is just -- is not going to be able to opine
19 on something that might be a moving target. The IRS
20 exactly wants what that plan will look like.

21 COMMISSIONER DOUMIT: Is that the same with
22 the Department of Labor in your experience?

23 THE WITNESS: In my experience, it is,
24 because the Department of Labor is not a big fan of
25 issuing hypothetical answers to hypothetical

1 questions. But if we have a real question with real
2 facts -- and that's redundant, I know -- but they --
3 they will issue an advisory opinion. And that's what
4 you want, an advisory opinion when you have exactly
5 the facts that we have.

6 COMMISSIONER DOUMIT: But because of your
7 relationship in both -- as you state in your
8 testimony, page 3 of BJM-04T, your relationship with
9 individuals at the Department of Labor and the IRS,
10 effectively you have what you believe are -- you are
11 confident in -- in your friends or your
12 acquaintances, or your folks within that you have
13 your relationships, opinions about this. You've got
14 sort of a provisional opinion, if you will --

15 THE WITNESS: Yes.

16 COMMISSIONER DOUMIT: -- informal. Okay.

17 THE WITNESS: That I can do, and that I did
18 do.

19 COMMISSIONER DOUMIT: Okay. Thank you.
20 Nothing further. Thank you, Your Honor.

21 MR. HAGLUND: Your Honor, could we have a
22 brief restroom break?

23 JUDGE HOWARD: Yes. I was about to take a
24 ten-minute break.

25 Mr. McNeil, thank you for your testimony. You

1 are excused from the remainder of the hearing. And
2 we will take a ten-minute break. We will rejoin here
3 at 11:04. And see you all back then. We are off the
4 record.

5 (A break was taken from
6 10:54 a.m. to 11:05 a.m.)

7 JUDGE HOWARD: Let's be back on the record.
8 We're resuming after our break. Our next witness is
9 David Lough.

10 Am I saying your last name correctly?

11 THE WITNESS: Yes, sir.

12 JUDGE HOWARD: And you're able to see and
13 hear me all right?

14 THE WITNESS: I am.

15 JUDGE HOWARD: All right. If you would
16 please raise your right hand, I'll swear you in.

17 * * * * *

18 David Lough, having been first duly sworn, was
19 examined and testified as
follows:

20 THE WITNESS: I do.

21 JUDGE HOWARD: All right. Mr. Haglund,
22 would you please introduce the witness?

23 MR. HAGLUND: Yes, Your Honor.

24 Mr. Lough, how long have you been involved in
25 the executive compensation consulting work?

1 THE WITNESS: More than 40 years.

2 MR. HAGLUND: And did you prepare original
3 and rebuttal testimony in this case?

4 THE WITNESS: I did.

5 MR. HAGLUND: And is it accurate to the best
6 of your knowledge?

7 THE WITNESS: Yes.

8 MR. HAGLUND: I tender the witness for
9 cross-examination.

10 JUDGE HOWARD: Thank you. PMSA, you may
11 proceed.

12 MS. DeLAPPE: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MS. DeLAPPE:

15 Q. Good morning, Mr. Lough.

16 A. Good morning.

17 Q. Looking specifically at the evaluation of individual
18 maritime pilot workloads, you have never previously
19 done that; is that right?

20 A. It is correct. The information that we are providing
21 for the Commission you might look at as a prevailing
22 rate or a going rate of pay for pilot roles across
23 the country, as a reference point for making
24 decisions.

25 Q. I think you've answered my question. Thank you.

1 And then you've never evaluated individual pilot
2 skill sets; correct?

3 A. I have not. We're looking at a --

4 Q. I think that's --

5 A. -- a prevailing rate across the nation to provide to
6 the Commissioners as reference for making their
7 decisions.

8 Q. Thank you.

9 And you've never evaluated individual pilot
10 education and training; correct?

11 A. I have not.

12 Q. And you've never evaluated the gender or ethnic
13 diversity of any pilot organization; correct?

14 A. No.

15 Q. And have you ever previously evaluated the rates of
16 compensation of pilots in other jurisdictions outside
17 of the Puget Sound prior to this engagement?

18 A. No.

19 Q. So this is your first time working on a project in
20 the maritime industry?

21 A. It is. I've worked across a diversity of industries,
22 as you can imagine, from educational districts to
23 high technology and everything in between.
24 For-profit, non-profit, publically-traded companies,
25 privately-held companies.

1 Q. And, Mr. Lough, I have a very limited time. So
2 unless you're going to provide a caveat that's
3 specifically responsive, I would ask that we just
4 stick to the answers to my questions, please.

5 Is there anything that you wanted to say, that
6 you actually have previous knowledge or experience in
7 the maritime industry?

8 A. I do.

9 Q. You have previous experience with -- so you said to
10 me this is your first time working on a project in
11 the maritime industry?

12 A. I did not. I said it was the first time working with
13 a pilot group and --

14 Q. My question actually --

15 A. -- analyzing data of a pilot group. It is part of
16 the maritime industry. I have provided services to
17 the maritime industry.

18 Q. Thank you. I think the transcript will reflect what
19 my question was, that this is your first time working
20 on a project in the maritime industry. And if I
21 could just make sure that I got my answer.

22 A. No.

23 Q. So you have worked on a project in the maritime
24 industry previously?

25 A. Yes.

1 Q. If you can please turn to Exhibit DL-02.

2 A. Yes.

3 Q. And that is -- it's entitled "Biographical Notes."
4 It's basically a summary of your professional
5 experience?

6 A. Yes.

7 Q. Could you point there to where you say in your
8 biographical notes anything about prior projects in
9 the maritime industry that you worked on?

10 A. This is a representation of the industries I have
11 served. It is not an all-inconclusive list. And
12 that list continues to grow.

13 Q. And so for purposes of this case in your biographical
14 notes that you provided, you didn't provide all of
15 the relevant experience that you have for the
16 maritime industry?

17 A. That is correct.

18 Q. Okay. So you've approached the development of the --
19 your testimony here. Can we say at least with
20 limited knowledge of preexisting knowledge of how
21 maritime pilots generally are compensated?

22 A. Yes. I was required to gain that knowledge during
23 the course of the assignment, which began over a year
24 ago, I believe. And through my interactions with
25 PSP, with counsel, and other individuals I've met

1 providing testimony, I have learned along the way
2 various aspects of the operation of the pilot
3 industry. Particularly relevant was the ability to
4 discuss the nature of the work with individual
5 pilots. Those are my --

6 Q. And so, Mr. Lough, if you can confine your answers to
7 not narrate beyond what I ask, I would appreciate it.

8 So specifically, you have no prior knowledge of
9 how -- how the Puget Sounds Pilots are compensated;
10 correct?

11 A. Prior knowledge. No more than one would impress.

12 Q. Did you have -- before the PSP engaged you, did you
13 have prior knowledge of how Puget Sound Pilots were
14 compensated?

15 A. No.

16 Q. Thank you.

17 And so what you learned in the preparation of
18 your testimony from -- for this case, is it in your
19 testimony and based on the exhibits to your
20 testimony?

21 A. I'm sorry. I don't understand the question.

22 Q. So what you learned -- you were telling us that you
23 had learned things in preparation for your testimony
24 in this case.

25 Is that all reflected in your testimony and in

1 the exhibits to your testimony?

2 A. I did not document in my testimony all I've learned
3 to provide a background and perspective for reviewing
4 information from other pilot groups.

5 Q. So what additional documents would reflect what you
6 learned for your analysis in this case, specifically
7 for this case?

8 A. There are additional documents that I prepared to
9 capture all of the knowledge and all of the
10 background and all of the perspective that I have
11 gained in preparing my testimony about Puget Sound
12 Pilots.

13 Q. Let's turn to some of the -- just some of the general
14 experience that you have as a compensation
15 consultant.

16 So when you're evaluating compensation generally,
17 do you consider a company's business structure and
18 the individual's relationship to that business
19 structure?

20 A. It's a two-part question. Certainly, I consider the
21 business structure, the business strategy, the
22 competitive markets, if they exist, the situation
23 within which the organization operates, and on and
24 on, to gain a perspective of the organization in the
25 industry or the sector in which it resides.

1 The second part of your question I didn't
2 understand. You said "the individual."

3 Q. And I don't know if the court reporter is having the
4 same problem I'm having, but your microphone seems to
5 be cutting in and out. Is there anything that can be
6 done on your side about that, if it can be moved
7 closer to you or if you can raise your voice?

8 A. I apologize in terms of my voice. I wound up with a
9 surprise sore throat this morning, and I will do my
10 best to give clear answers.

11 Q. I can see that the court reporter is struggling. Me
12 too.

13 A. [Audio distortion] speak up. My voice does fail from
14 time to time. I'm doing the best --

15 Q. It sounds like it's the microphone.

16 JUDGE HOWARD: I'm hoping if it's an
17 internet issue, it will abate soon. Let's keep an
18 eye on it.

19 MR. HAGLUND: We're checking all our
20 connections right now, Your Honor.

21 JUDGE HOWARD: All right.

22 THE WITNESS: Is this any improvement?

23 MS. DeLAPPE: Yes. I think so.

24 BY MS. DeLAPPE:

25 Q. Okay. We'll give this a try then.

1 So back to general questions about your
2 experience.

3 The second part of my question, do you consider
4 the individual relationship -- the person who is
5 receiving the compensation, do you consider their
6 relationship to that business structure?

7 A. For clarification, you mean, for instance, if I'm
8 looking at the chief financial officer of an
9 organization, do I look at chief financial officer
10 position in the context of the whole organization, is
11 that -- and the answer to that would be, yes.

12 THE REPORTER: I still have moments he's
13 cutting out for me. I can hear everyone else fine.

14 THE WITNESS: We don't sense any technical
15 issue on this side.

16 MR. HAGLUND: It must be an internet issue.
17 Because we're not having any problem hearing anybody.
18 And Mr. Lough has increased the volume, despite his
19 sore throat.

20 THE REPORTER: Ms. DeLappe, did you have the
21 issue again?

22 MS. DeLAPPE: I did. I don't seem to have
23 it as much, however, with Mr. Haglund, who I believe
24 is on the same connection.

25 Is that your experience?

1 THE WITNESS: I believe we're using the same
2 microphone; is that correct?

3 MR. HAGLUND: That is correct.

4 MS. DeLAPPE: Shall I muddle on?

5 JUDGE HOWARD: I would suggest we continue.
6 I mean, if the court reporter is able to make a
7 record. I'm able to understand the witness. I
8 did -- he was cutting out earlier. I think it's a
9 little bit better now. And I'm hopeful that this
10 internet issue goes away shortly.

11 MS. DeLAPPE: Okay. I will resume.

12 MR. HAGLUND: Your Honor, if it helps, you
13 just cut out on our side.

14 MS. DeLAPPE: Not for me.

15 THE REPORTER: Not for me either.

16 MS. DeLAPPE: I wonder if it might be wise
17 to establish a phone connection so that we don't have
18 problems with the transcript to -- as a -- as an
19 alternate --

20 JUDGE HOWARD: Mr. Haglund, could your IT
21 support call in with an audio line to the -- the
22 information for the hearing also provides a call-in
23 number, and sometimes we use that as an audio backup.
24 And we mute our microphones and we call in.

25 MR. HAGLUND: I'll consult with Mr. Crandall

1 and we -- yeah, he says that can be done. So
2 we'll -- do you want to -- we'll let him -- he's
3 checking out that number, and he's now about to call
4 on his phone.

5 JUDGE HOWARD: We can be off the record for
6 a moment.

7 (A break was taken from
8 11:19 a.m. to 11:20 a.m.)

9 JUDGE HOWARD: All right. Let's be back on
10 the record. We're back on the record after a short
11 technical interruption. Please proceed.

12 MS. DeLAPPE: Thank you.

13 BY MS. DeLAPPE:

14 Q. So, Mr. Lough, would you -- in general terms, in
15 evaluating compensation, would you consider whether
16 someone has equity as a partner in a partnership in
17 addition to being a worker?

18 A. "Equity," meaning ownership and stock-based equity?

19 Q. Any type of ownership interest, isn't that what
20 equity would mean?

21 A. It can mean various things depending on what we're
22 talking about. Yes, I would say we certainly
23 consider the ownership position and the income
24 derived from such a position.

25 Q. And generally, would you agree that it is reasonable

1 for someone who is a partner in a partnership to
2 expect additional compensation when that business is
3 more profitable?

4 A. The true answer is not necessarily. We would expect
5 higher contributions to their partnership accounts.
6 Now, income is the distribution of cash from those
7 accounts. It depends on how the partnership
8 agreement is written and how distributions of cash
9 are determined from the partnership.

10 Q. And so when I say the word "compensation," it sounds
11 like you're hearing cash distributions.

12 But that's not how it necessarily works; right?

13 A. Well, not necessarily how it works. In other words,
14 a partnership account can accumulate or lose money.
15 Income can remain constant by drawing upon that
16 partnership account.

17 Q. So is it reasonable for a partner in a partnership to
18 expect lower compensation when the partnership is
19 less profitable and I'm --

20 A. The distribution of income may not decline --

21 Q. And I'm --

22 A. -- under such circumstances. Over the long poll,
23 that's not sustainable, is it? And income would
24 eventually go down.

25 Q. Thank you.

1 And a partner might even have no income if the
2 business has only losses; correct -- net losses?

3 A. That is certainly possible.

4 Q. I'd like to run a hypothetical by you to illustrate
5 the equity partnership compensation issue.

6 If you can please assume that there are two
7 partnerships, where they both have identical
8 partnership agreements that determine the amount that
9 each partner receives in equity and cash, and that
10 that is an equal share of net income.

11 If Business A, let's say, has 50 partners, and
12 Business B has 100 partners, but both businesses earn
13 the same dollar amount of gross revenues, would you
14 agree that the per partner gross revenue for Business
15 B is half of what it would be for business -- per
16 partner for Business A?

17 A. The gross revenues are equivalent, and you have twice
18 as many partners in one as the other, yes, there will
19 be half as much per partner gross revenue where the
20 gross per partners is higher. Income is a different
21 story.

22 Q. Thank you.

23 Actual partner compensation, as I think you were
24 saying it just now, would -- could vary greatly
25 between Business A and Business B based on the

1 partnership agreements; right?

2 A. Absolutely.

3 Q. So --

4 A. Particularly in the short term, if I may follow up.

5 You know, in the long poll, if you're continuing to
6 be unprofitable, then your income will decline. You
7 can only borrow so much to fund income at a
8 partnership. And eventually that will happen. But
9 on a year-to-year basis, it can be kept much more
10 consistent from one year to the next, in spite of
11 fluctuations of revenue.

12 Q. So if a partnership adds more new partners faster
13 than it increases its revenues, then the per partner
14 gross revenues will decrease; right?

15 A. Yes.

16 Q. The same holds true if this scenario occurs because
17 the partners all agree to add more partners in order
18 to work less per partner; right?

19 A. Yes. We are talking gross revenue, not income. But,
20 yes.

21 Q. Perfect. So let's now turn to a hypothetical for
22 independent contractors. So I would like you to
23 assume that two businesses, each run by a sole
24 proprietor who works as an independent contractor,
25 both charge -- where both charge equal rates per job

1 and each has equal expenses per job and each
2 independent contractor retains all the profits.

3 If Independent Contractor A does 100 jobs and
4 Independent Contractor B does 50 jobs, would you
5 agree that Contractor B would earn less than
6 Contractor A who is doing twice as much work?

7 A. And I need to ask -- I apologize. Did you say the
8 price per job is equal between the two?

9 Q. Is equal.

10 A. Yes. That is a mathematical calculation. Yes,
11 absolutely.

12 Q. And if an independent contractor/sole proprietor adds
13 more new expenses faster than revenues, then that
14 sole proprietor will see their take-home compensation
15 after expenses decrease; right?

16 A. Yes. You've defined a simple case. Sole proprietor,
17 we only have one person involved. And income will
18 fluctuate directly with revenue and expenses.

19 Q. If -- if I --

20 MS. DeLAPPE: Your Honor, if I may just ask
21 whether PSP has turned off the internet line and is
22 using only the phone line, because I think we're
23 still having the cutting out.

24 JUDGE HOWARD: It sounds -- it sounds like
25 the audio is coming through the internet.

1 MS. DeLAPPE: Yes.

2 JUDGE HOWARD: Are we using the line?

3 THE WITNESS: We are using the line.

4 MR. HAGLUND: We both are -- both are -- we
5 have not done anything to -- we haven't touched the
6 phone since it was placed in front of him.

7 JUDGE HOWARD: Okay. I'm just wondering if
8 he's being picked up instead by a computer
9 microphone.

10 Is it a conference line that's in front of you
11 all that you can all rely on for the audio?

12 MR. HAGLUND: Well, my concern is it's
13 across the table. Whether or not -- the distance
14 across the table, whether I would be picked up by the
15 phone right next to him, I don't know.

16 JUDGE HOWARD: Okay. Then let's -- let's
17 give it another --

18 MS. DeLAPPE: And I would just say, like, if
19 all of the microphones are off, except for the
20 telephone, it should resolve the problem. But that's
21 as far as my technical abilities go.

22 BY MS. DeLAPPE:

23 Q. So moving back then to the hypothetical.

24 A. I'm sorry. One minute, please. We're adjusting the
25 microphone now. I appreciate your patience. All

1 right. We're going to try.

2 Q. Okay.

3 A. Here we go.

4 Q. So merging these two hypotheticals, would you agree
5 that if an independent contractor/sole proprietor
6 took on a new business party at equal equity, 50/50
7 ownership, but the business did the same amount of
8 work and produced the same level of gross revenue and
9 had the same expenses as before, that the revenue of
10 the former independent contractor would be reduced?

11 A. Yes.

12 Q. Could you please turn to Exhibit DL-6, which is your
13 table entitled "Pilot Group Income and Benefits."

14 A. Yes.

15 Q. And under the current tariff, the current net income
16 in that table you have is based on 52 pilots; right?

17 A. For Puget Sound Pilots.

18 Q. Correct.

19 A. Yes.

20 Q. And, also in that table, you point out that PSP fell
21 short of the UTC's targeted net income per pilot for
22 2021 of approximately \$400,000, with an actual DNI in
23 2021 of \$295,000?

24 A. Yes.

25 Q. Table DL-6 also includes a column titled "Number of

1 Pilots."

2 A. Yes.

3 Q. Okay. And that's what you were looking at when you
4 said 52?

5 A. Yes.

6 Q. And you included the column "Number of Pilots"
7 because the number of pilots is an important factor
8 when calculating the net income of a pilot group?

9 A. Not in all cases, simply because sometimes the
10 information that we received was per pilot and did
11 not rely on obtaining the information of number of
12 pilots to calculate the per pilot income.

13 In other cases, where the information was
14 provided as a total income for the -- the pilot
15 group, then there was the need to divide by the
16 number of pilots. We, of course, tried to ensure
17 that the number of pilots that were counted matched
18 the time frame of the income reported.

19 Q. And so you would say, based on the information that
20 you received, because of the data you received, the
21 number of pilots was a relevant factor; right?

22 A. In some cases. In others not. I don't know offhand
23 the number to which that would apply. Again,
24 sometimes the source documents provided income per
25 pilot, in which case we did not need to utilize a --

1 information about the number of pilots in the
2 organization.

3 Q. Are you familiar with -- well, for PSP, I'll just
4 say, was it important to put down the number of
5 pilots or is that information extraneous?

6 A. It's not extraneous. We wanted to demonstrate the
7 distribution of the size of each operation to
8 indicate that, with the exception of Grays Harbor
9 Pilots, we generally have large pilot groups here.

10 Q. So you would agree --

11 A. As is Puget Sound Pilots.

12 Q. So you would agree that the number of pilots for
13 Puget Sound Pilots in this table, the number of
14 pilots was a relevant factor?

15 A. In calculating DNI?

16 Q. It's a relevant factor for your table?

17 A. It's relevant to give perspective as to where it
18 falls and how it lines up against the other pilot --
19 pilot groups in terms of number of pilots, yes.

20 Q. So you haven't included the number of pilots in this
21 table because it's extraneous? It's relevant?

22 A. It's relevant for perspective in terms of looking at
23 the pilot groups.

24 Q. So we can agree it's relevant? I mean, I don't know
25 why you keep --

1 A. Yes.

2 Q. Okay. Thank you.

3 A. It wasn't -- was that number exactly relevant in the
4 calculation of DNI?

5 Q. My question actually wasn't about relevant for, but
6 we're just agreeing that it's relevant.

7 A. Okay.

8 Q. Are you familiar with a PSP filing that projects
9 total partnership of 56 pilots?

10 A. I am not.

11 Q. So you're not aware that PSP is looking to add an
12 extra four new partners to its business to have 56 --

13 A. I was aware that there was -- I'm sorry.

14 Q. Go ahead.

15 A. I was aware that the number of pilots was to
16 increase. And that is the plan.

17 Q. Okay.

18 A. I did not know the exact number.

19 Q. And so that means that with four new partners to its
20 business, PSP will need to share its revenues among
21 56 individuals instead of 52; correct?

22 A. Yes.

23 Q. And it's looking to add these new partners at a time
24 when PSP's net income per pilot is already below its
25 targets?

1 A. I can't quite say that because I don't know the
2 timing of the addition of -- and you indicated it was
3 four pilots.

4 Q. Have you had a chance to review the pro forma and
5 statement of operations by Weldon Burton regarding
6 proposed PSP expenses?

7 A. No.

8 Q. So if you could turn to Exhibit WTB-05. And look at
9 the tab "Results of Operations."

10 A. We're trying to find that.

11 Q. This is a little frustrating because I sent the list.

12 A. Here we go.

13 Q. Okay.

14 MR. HAGLUND: Mr. Crandall is a lot faster
15 than paging through the notebooks.

16 MS. DeLAPPE: Yes. And this is a
17 spreadsheet.

18 THE WITNESS: Yes. And the spreadsheet just
19 came up.

20 MR. HAGLUND: It's very large.

21 THE WITNESS: It has about 150 tabs on it.
22 "Results of Operations" we just found.

23 BY MS. DeLAPPE:

24 Q. Thank you.

25 A. But it's all months, ending December 31, 2021.

1 Q. So this is the first time you've ever looked at this
2 spreadsheet?

3 A. I'm making sure. Yes.

4 Q. Okay. Are you aware that PSP is proposing to
5 increase its expenses in this general rate case from
6 \$16 million to \$19.1 million?

7 A. That seems to be what this indicates.

8 MR. HAGLUND: Your Honor, I'm going to
9 object to this line of questioning as outside the
10 scope of Mr. Lough's direct or rebuttal testimony.
11 He's not seen these documents or opined on them in
12 any fashion.

13 JUDGE HOWARD: I will allow the questions so
14 far. So far they've been focused on his awareness.

15 MS. DeLAPPE: Thank you.

16 BY MS. DeLAPPE:

17 Q. Mr. Lough, if you could please turn to Exhibit
18 DL-30X. And those are PMSA's data requests that you
19 may recognize. And I'm looking specifically at
20 page 4, which has data request 764.

21 A. Yes.

22 Q. So my question for you is: If PSP is adding more
23 partners and it's increasing expenses faster than its
24 revenues, using simple math, would you agree that
25 PSP's individual pilots should expect to earn less

1 than they do now?

2 A. Should expect to earn less. I -- to tell you the
3 truth, I don't know sufficient amounts about the
4 financial structure or how income is distributed to
5 answer your question.

6 I would say, generally, what you're proposing,
7 presented as an exercise in simple math, is true.

8 Q. Thank you.

9 Do you also agree that a per hour earned by PSP
10 for each hour of piloting service provided to a
11 vessel customer is a component of the current tariff
12 and of the tariff proposed by PSP?

13 A. I don't know that specifically. I would say I assume
14 so. It makes sense to me.

15 Q. If one were to assume that and assume a fixed number
16 of vessel customers, would you agree that there are
17 also a fixed number of vessel hours charged for pilot
18 services provided to those vessels?

19 MR. HAGLUND: Objection. Vague and
20 confusing.

21 MS. DeLAPPE: Let me restate.

22 BY MS. DeLAPPE:

23 Q. If you were to assume a fixed number of vessel
24 customers, would you agree that there are also a
25 fixed number of vessel hours charged for pilot

1 services provided to those vessels?

2 A. In testimony I've heard, I think it really depends on
3 the vessel, doesn't it? Same number of vessels.

4 Hmm. I think perhaps we should say the same number
5 of vessels with the same mix of vessels of different
6 types. And the number of hours, when you add it all
7 up, then increases or decreases proportionally.

8 Q. As a matter of just general simple math, would you
9 agree that under an hourly tariff, when pilots work
10 less, they earn less?

11 A. I would have to agree with that generally. I -- I
12 believe it would be more useful if I had specific
13 examples of the transitions from one situation to the
14 next that you're alluding to or trying to describe.
15 We're talking generally.

16 Q. Very generally.

17 A. And we're also talking in a manner, for instance --
18 or I'm not familiar with the differences among ships
19 and the number of hours they might take to give a --
20 an intelligent answer to the question. But you're
21 trying to make it generally assume this, generally
22 assume that. Okay.

23 Q. Just applying simple math; right? It's just under an
24 hourly tariff. When pilots work less, they earn
25 less.

1 A. Yes.

2 Q. Okay. Would you agree that the opposite math also
3 works; that with a fixed number of vessel hours, if
4 the number of pilots decreases, the average revenue
5 per pilot would increase?

6 A. Yes.

7 Q. So again, simple math, under an hourly tariff, when
8 pilots work more, they earn more?

9 A. Yes.

10 Q. Thank you. Let's move --

11 A. As a group.

12 Q. -- on -- yes -- to the next area I'd like to ask you
13 questions about.

14 Once you were engaged by PSP, you had to get up
15 to speed on pilot compensation to provide your
16 opinions and testimony for this case, as you
17 mentioned earlier; right?

18 A. Yes.

19 Q. So I'd like to talk to you about the specific
20 exhibits and data in your testimony.

21 All of the data, if you go back to DL-6 and that
22 table, all of the data that underlies that table was
23 provided to you by PSP, I think you testified
24 earlier; is that right?

25 A. All the data that's provided in the net income table

1 was provided by PSP in the sense that PSP or counsel
2 located documents. Whether they be rate orders,
3 financial statements. Each of those numbers is
4 specifically documented and cited. They provided the
5 documents.

6 Q. Correct. Yes. That's what I was meaning to ask,
7 that they provided the documents that you used to
8 compile the data for this table.

9 A. Yes. And they were official documents. They weren't
10 documents prepared by PSP to give me the information.
11 They were simply copies of documents.

12 Q. Could you please turn to Exhibit DL-29X. And turn to
13 page 2. This is PMSA's data request No. 246. And
14 you'll see there that we asked, "Have you acquired
15 the financial statements or public rate orders from
16 any other sources?" And you responded, "No"?

17 A. I did.

18 Q. Great. So you did no independent research on the
19 pilot groups listed in Table DL-6?

20 A. I did some independent research. If I may give you
21 an example. I looked to find, for instance, in LA
22 Pilots, the LA pilot group, whether or not -- since
23 they are employed by the city and they are not a
24 pilot group, per se, the pilots are employed by the
25 city, I independently searched to see if there was

1 one or more job descriptions that applied to those
2 pilots in order to verify that the way the city had
3 structured the roles was, indeed, that of a pilot.

4 Q. Mr. Lough, if you could turn to DL-29X again, page 3
5 this time, data request No. 247.

6 A. Yes.

7 Q. And there we asked, "Did you attempt to acquire data
8 relevant to your evaluation from any of the 36 other
9 pilots on the APA's pilot group list"; right?

10 A. That was attempted. Absolutely.

11 Q. And you said in response, you said, "It is my
12 understanding that PSP counsel and PSP leadership
13 have continued to monitor developments involving
14 maritime pilot compensation in the United States in
15 their effort to secure all publically available
16 financial statements or rate orders."

17 A. Yes.

18 Q. That was your answer?

19 A. Yes.

20 Q. So you did no independent research to find
21 information from the other pilot groups in the other
22 pilotage grounds, right, other than what PSP provided
23 to you?

24 A. Correct. It is my understanding that they provided
25 information on every pilot group for which they could

1 discern if there is publically available information
2 and none were excluded except for that reason, if
3 they couldn't --

4 Q. Mr. Lough -- oh, excuse me.

5 A. If they couldn't locate it, if they couldn't identify
6 it. But every best effort was made, as I understand
7 it, to locate information for every pilot group.

8 Q. My question is not about the efforts that they made.
9 It was specific to your independent research. And I
10 think we've established that you relied on what you
11 were provided by PSP?

12 A. Oh, absolutely. Yes. Yes.

13 Q. Thank you.

14 Just quickly, regarding diversity, you didn't
15 receive any demographic information or diversity
16 profiles for any of these pilot groups, did you?

17 A. That is correct.

18 Q. And you didn't develop any yourself, independently?

19 A. No.

20 Q. So in the context of Exhibit DL-6, you don't know
21 whether any of these pilot groups are more diverse
22 than PSP?

23 A. I do not. I do know that the -- generally, the pilot
24 population is not a very diverse population across
25 the country. I believe it's around 1,700 pilots

1 total.

2 Q. And that is going beyond --

3 A. It is not a diverse group.

4 Q. Yeah. Beyond what I'm asking, but thank you.

5 Now with respect to workload, your calculations
6 of comparable pilotage grounds do not contain any
7 workload factors, do they?

8 A. They do not.

9 Q. And the projections in Exhibit DL-6 for 2023, they
10 don't include or account for workload factors either?

11 A. The reason I'm hesitating is there are examples where
12 ship traffic usually in a minor -- either assumed
13 actual ship -- assumed ship traffic increases might
14 affect the result of a projection.

15 Q. Do you -- do you -- did you yourself calculate that
16 effect for any of these projections?

17 A. Yes.

18 Q. So if we look at the projected net income column --

19 A. Yes.

20 Q. You -- you analyzed workload factors in those
21 calculations in coming up with those numbers?

22 A. No. To the extent that workload -- that traffic
23 affects workload -- it may or may not, I guess for a
24 pilot -- that was -- may have been incorporated into
25 some of the calculations. It had a relatively minor

1 effect.

2 Q. All right. And if you can look at Exhibit DL-29X at
3 data request 244, which is -- let me pull that up.
4 Yeah. So that's the first page.

5 A. Yes.

6 Q. And you see there, for No. 2 there, subpart 2, we
7 asked, "Do the projections for 2023 net income
8 include an evaluation of the number of assignments or
9 other workload factors per pilot?" And if you could
10 look at your response there.

11 A. Yes.

12 Q. Nice clean "No." That's correct, isn't it?

13 A. Yes. And when I answered the question, I did not
14 interpret an evaluation of the number of assignments
15 to pertain to the idea of a general increase in
16 traffic.

17 Q. Okay.

18 A. If that's your definition of "workload."

19 Q. Are you saying -- I'm sorry. This -- we keep
20 stepping on each other's lines. It is inadvertent.

21 Are you saying your answer here is -- it is still
22 correct; right? You stand by your answer on this
23 page?

24 A. Yes.

25 Q. Now, a few minutes ago in your testimony, you agreed

1 that if the pilots work more or work less, that
2 actually is a factor in compensation.

3 Do you recall that part of your testimony?

4 A. Yes.

5 Q. So without pilot workload data across these various
6 pilotage grounds, you can't truly compare them;
7 right?

8 A. I don't think that's true. Again, what we're trying
9 to do is establish a prevailing rate. The Commission
10 is challenged with establishing a distributable net
11 income, which in most other organizations seems to be
12 referred to as target net income. That is affected
13 by an assumed rate of traffic. It is calibrated
14 through the tariff.

15 Now, actual workload, if you will, or actual
16 volume of traffic, will affect the actual income,
17 perhaps having a greater or lesser than DNI.

18 Q. So I guess what I'm getting to is, you are aware that
19 what the pilots are -- the PSP pilots are actually
20 being compensated for is for the amount of work they
21 do; right?

22 A. I do understand that there is DNI, that there is an
23 assumption built into that DNI of how much tariff
24 income will be generated.

25 Q. But you didn't look at actual workload that goes into

1 that, did you?

2 A. I did not.

3 Q. Based on what you've testified today, am I correct in
4 understanding that you did not know that PSP produced
5 a chart of pilotage grounds to demonstrate comparable
6 workload data in other testimony in this case?

7 A. I am aware that there was other testimony in this
8 case related to workload.

9 Q. So if you turn to Exhibit IC-14 -- and let me know
10 when you're there. It's a spreadsheet.

11 A. Yes.

12 Q. Have you seen this before?

13 A. I think I did, but I think it was by accident. I did
14 not see it before.

15 Q. All right. So PSP did not provide this workload data
16 to you when you were putting together your table for
17 DL-6?

18 A. They did not provide it to me for the purposes of
19 analyzing compensation. That is correct.

20 Q. And when you look at Exhibit IC-14 and compare it
21 with your table, DL-6, would you agree that they're
22 different lists of pilotage grounds there?

23 A. Yes. There's some in common -- are different. Not
24 included, yes.

25 Q. You cut out a little different -- a little bit there,

1 but I think you said that they are different lists;
2 right?

3 A. They have common pilot groups, but they are different
4 lists in the sense that there's particularly ones on
5 this list that are not included in compensation
6 analysis.

7 Q. So they're not the same lists of -- on your list,
8 you'll agree with me you have 12 pilot groups; right?

9 A. Yes. And there are 14 on this one.

10 Q. And they're not all the same pilot groups; right?

11 A. 16. Correct.

12 Q. Thank you.

13 Sometimes seeming a little harder than it needs
14 to be. But thank you.

15 I take it you don't know why PSP did not provide
16 this list, Exhibit IC-14, to you for your work?

17 A. Why they -- I'm sorry. Make sure I understand. Why
18 they did not provide it?

19 Q. Right.

20 A. I didn't know they had a motive of not providing it.
21 They did not provide it. That is true.

22 Q. And you don't know why?

23 A. I don't know why they didn't.

24 Q. Okay. Do you -- do you know why PSP omitted pilot
25 workload data for -- that they have here in IC-14,

1 for pilotage districts like San Francisco, where, as
2 shown in your DL-6, they had financial data?

3 A. I was not asked to evaluate workload. And in that
4 sense, information -- you asked if San Francisco was
5 provided in terms of workload. No, I do not have
6 that information.

7 Q. Did you evaluate the level of training and education
8 that's needed to get a pilot's license?

9 A. For Puget Sound Pilots or for other groups or for
10 both?

11 Q. Anything.

12 A. No.

13 Q. Did you evaluate the PSP equity and ownership
14 structure?

15 A. Evaluate it?

16 Q. Did you look at it at all in your work?

17 A. I did not read the partnership agreement or the
18 documents related to the organization.

19 Q. And so you didn't look at the cost of pilot buy-ins?

20 A. I'm sorry. You cut out there for a second.

21 Q. You didn't look at the cost of pilot buy-ins?

22 A. I did not.

23 Q. Did you include a value for PSP earned time off in
24 your evaluation of PSP income and in comparison with
25 other pilotage grounds?

1 A. No.

2 Q. Looking, again, at Table DL-6, I'd like to ask about
3 your -- your listing of Puget Sound Pilots.

4 So as you show here -- and we've discussed --
5 just because the UTC has authorized a target net
6 income level for PSP, doesn't mean that's what the
7 pilots actually earn; correct?

8 A. Correct.

9 Q. So that's why your pilot -- we talked about the cell
10 that shows there at the bottom, 2021 DNI and 2021
11 actual is different?

12 A. Yes.

13 Q. And that's a decline of about 25 percent; correct?

14 A. Yes. A decline of \$100,000 divided by 400,000 is 25
15 percent.

16 Q. So for your table here, for other jurisdictions, your
17 table is mixing target net income from various rate
18 orders with actual net income -- the actual income
19 figures across the various pilot groups; right?

20 A. Yes. And I think -- you know, to provide the
21 Commission with the best information on a basis, if
22 you will, or a reference for setting DNI, ideally
23 what we have -- would have is current equivalent of
24 DNI target net income, for all other pilot groups.
25 That would be the most solid reference.

1 When we did not have that information because it
2 wasn't available as far as PSP or counsel could
3 ascertain, we used actual net income as a proxy for
4 or attempt to indicate targeted net income. It's the
5 best information we have. I was asked to provide a
6 projection for each of these organizations for 2023.
7 Why 2023? That's the time frame that the Commission
8 is being asked.

9 Q. And, Mr. Lough, I think you're getting beyond,
10 because I did not ask about your projections.

11 If you could look at just the part where you say
12 for PSP, you -- you are very clear one is 2021
13 what -- the DNI, the state target. And the other is
14 actual.

15 You don't show, for these other pilot groups in
16 this table, which ones are actual or which ones are
17 targets from a rate order; correct?

18 A. It's all -- it is all documented in the testimony,
19 pilot group by pilot group.

20 Q. Okay. So your table, it just didn't make those notes
21 for any of the rest of the pilot groups in the table?

22 A. For any of the -- that's correct. It does not appear
23 here.

24 Q. And when you list net income, how can you be sure you
25 know what any specific pilot of any of these groups

1 is actually earning?

2 A. This is where we are using the target net income. We
3 don't know what they actually earned.

4 Q. Thank you.

5 I'd like to also ask you about some of the
6 numbers that you're using to populate this table for
7 the jurisdictions where you do have actual pilot
8 income information.

9 So if you look there where -- for New Orleans,
10 NOBRA; right? At 2021, you show a net income of
11 565,518; right?

12 A. For 2020.

13 Q. 2021; right?

14 A. Yes. I apologize.

15 Q. Could you please turn to Exhibit DL-9, your Exhibit
16 DL-9, page 3. And would you agree that this is a
17 listing of individual NOBRA pilot's earnings?

18 A. Yes.

19 Q. How much did Pilot No. 7 earn in 2021?

20 A. \$210,952.36.

21 Q. And how much did Pilot No. 23 earn in 2021?

22 A. \$180,348.71.

23 Q. And No. 24?

24 A. \$169,931.86.

25 Q. Do you agree that there's no uniform income

1 distribution for NOBRA pilots in 2021?

2 A. I'm sorry, no uniform?

3 Q. There's no uniform income distribution for these
4 pilots in 2021.

5 A. "Uniform," meaning they did not all earn exactly the
6 same?

7 Q. Correct.

8 A. They did not all earn exactly the same.

9 Q. And the numbers actually vary widely from person to
10 person; right?

11 A. They do.

12 Q. Do you agree that there is a large variety in the
13 earnings of NOBRA pilots then?

14 A. Yes.

15 Q. Is it possible that some of those pilots, NOBRA
16 pilots, make significantly more than the target net
17 income because they're doing overtime work?

18 Let's look, for example, at Pilot No. 112. How
19 much is that pilot earning?

20 A. \$619,723.72.

21 Q. That's more than the others that you were referring
22 to; right?

23 A. Yes.

24 Q. Is it possible that that's because of overtime work?

25 A. The entire differential I doubt would be due to

1 overtime work.

2 Q. Do you know?

3 A. I don't think we would attribute the entire
4 differential to overtime work.

5 Q. Do you have any basis for drawing any conclusion
6 whatsoever about that?

7 A. About explaining the differential?

8 Q. Correct.

9 A. That those, less the \$400,000 a year, would be either
10 part-time or new hires that were hired during the
11 year.

12 Q. So it's possible that those ones, the part-time ones
13 or the ones earning -- that started for a partial
14 year, that they earn -- that they worked less and
15 therefore were paid less?

16 A. Yes. They worked a lesser portion of the year.

17 Q. And then the ones that were paid more were possibly
18 because they worked more?

19 A. Worked more and then paid some overtime for that,
20 yes.

21 Q. Thank you.

22 Is the -- turning back to your table, you talk
23 about the Crescent River Pilots net income. And
24 you've provided with your testimony a rate order at
25 Exhibit DL-07.

1 Is the Crescent River Pilots' net income from a
2 rate order what the pilots actually make there in
3 2021?

4 A. It is not. It's their target net income for 2021.

5 Q. So we don't know what the Crescent River Pilots
6 really made; correct?

7 A. Correct.

8 Q. So like PSP, their actual income could be lower than
9 their target income?

10 A. Yes. And it could be higher.

11 Q. Would you say the same for Port Everglades Pilots?
12 And you have their rate order at exhibit --

13 A. Yes. It's a rate order. Yes. I had to check if it
14 was a rate order. Yes.

15 Q. So like PSP, is it possible that their actual income,
16 net income, was 25 percent lower than their target
17 net income?

18 MR. HAGLUND: Objection. No time frame
19 given. Are you speaking of a specific --

20 MS. DeLAPPE: 2021. Always. Thank you.

21 THE WITNESS: Their target net income in
22 2021 --

23 BY MS. DeLAPPE:

24 Q. Excuse me. If I may correct myself. The -- your
25 table at DL-6 shows it for 2019. So that's my focus.

1 MR. HAGLUND: Could you repeat the question?

2 THE WITNESS: Yes, please. Could you repeat
3 the question? Yes. My table does show \$549,998 for
4 2019, the year that the -- of the rate order.

5 BY MS. DeLAPPE:

6 Q. And it is possible that they could have made
7 25 percent less than that in actual income; right?

8 A. In 2019?

9 Q. Right.

10 A. It's possible that 2019, chances were pretty good
11 that they may have made more, from what I can see for
12 those pilot groups, since economic activity was
13 normal to good in 2019.

14 Q. And that, you would agree, is one factor that goes
15 into the income; right?

16 A. Yes.

17 Q. Not -- not the only factor?

18 A. No. It is not.

19 Q. Okay. So, Mr. Lough, if -- for example, in -- you
20 have in other parts of the chart, as you explained,
21 used actual income and not rate orders.

22 For example, you included what the San Francisco
23 Bar Pilots actually made in 2021; right?

24 A. Yes.

25 Q. And that's 328,154?

1 A. Yes.

2 Q. And what did you include for the income in your 2023
3 projection for the San Francisco Bar Pilots?

4 A. This was a challenging one, because all we had was
5 actual net income for each of those four years. And
6 we had no target net income or anything along those
7 lines. This was the information.

8 And the challenge was to take that information
9 and best project as we can for 2023. And in order to
10 accomplish that, particularly since 2020 and 2021
11 were economic down years because of COVID, we felt
12 that including 2018 and 2019 in looking forward, the
13 look-forward calculation would be appropriate.
14 Economic activity in 2018 and 2019 was similar to
15 2023, what --

16 Q. So Mr. Lough --

17 A. -- 2023 --

18 Q. I just want to bring you back to what my question
19 was. And maybe it would be better if I just tell you
20 the answer, and you can agree with me or disagree
21 with me.

22 What did you include for San Francisco Bar Pilots
23 income in your 2023 projection, and so that --

24 A. An average of the four years, 2018 through 2021,
25 assuming no increase, like inflation increase or

1 activity increase, that would produce a higher number
2 for 2023. It was a conservative approach. A very
3 conservative approach.

4 Q. So just to clarify, the last data you had was
5 328,154. And you projected for 2023, 443,923;
6 correct?

7 A. Correct. The average of the four.

8 Q. Turning to the LA Pilots in the chart.

9 Would you please now turn to Exhibit DL-19.

10 And that is a -- a chart with a bunch of names.

11 Would you agree that this exhibit includes actual
12 pilot income from LA Pilots from 2020, 2019, 2018,
13 2017, and all the way back to 2011?

14 A. Yes.

15 Q. And would you also agree that the latest data that
16 you have in that exhibit is for 2020?

17 A. Yes. The latest data in the exhibit is for 2020,
18 yes.

19 Q. And that the data for 2020 produces an average net
20 income for LA Harbor Pilots of 308,168; is that
21 correct?

22 A. I do not know that.

23 Q. Can you quickly calculate that?

24 A. I cannot. It's not in the spreadsheet. It's in a
25 PDF.

1 Q. In your table, how did you end up projecting -- well,
2 let's just say, assuming that that is true, that the
3 average is 308,000, roughly, for 2020, you, in your
4 table at DL-6, projected for 2023, 456,719; correct?

5 A. Excuse me. The only data from the table that was
6 included in the calculation to make sure the
7 calculation was comparable was full-time data. And
8 half of the pilots listed are part-time. We're
9 interested in annual full-time rate, annual full-time
10 rate in a year for which the pilot was employed for
11 the full year. That's what we're interested in.

12 So it is a subset of this entire list that
13 provides that information. It is those that are
14 marked in the far right column FT or full-time. So
15 no PT, part-time, items were included.

16 Q. Mr. Lough, could you turn to D -- your original
17 testimony, DL-01T at page 16. And let me know when
18 you're there.

19 A. I'm there.

20 Q. So let's look here at your explanation of how you
21 made your projection of 2023 net income for Los
22 Angeles pilots.

23 A. Oh, I'm not there. Page --

24 Q. Line 4.

25 MR. HAGLUND: Which page did you mention,

1 Counsel?

2 THE WITNESS: It's page 15 starting, and
3 then it carries over to 16. I see where you are.

4 BY MS. DeLAPPE:

5 Q. Great. I'll just quote from line 4 on page 16.

6 "Using the same methodology for NOBRA, Lake Charles,
7 and Associated Branch Pilots, I increased the 2019
8 income level of \$434,712 by 2.5 percent for 2021 and
9 2022, skipping 2020 due to Covid-19 traffic impacts";
10 correct?

11 A. Yes.

12 Q. So could you look, please, back at DL-6, and look at
13 your entry for the Lake Charles Pilots.

14 In your testimony, you said that you were using
15 the same methodology for the Los Angeles Pilots that
16 you used for Lake Charles Pilots; correct?

17 A. Yes.

18 Q. And that methodology excluded 2020, due to COVID-19
19 impacts?

20 A. Yes.

21 Q. But in Table DL-6, you included 2020 for Lake Charles
22 Pilots; right?

23 A. The information is from 2020, correct.

24 Q. So you didn't follow that methodology for the Los
25 Angeles Pilots, did you?

1 A. The Los Angeles Pilots started in 2019.

2 Q. So do you agree that if you followed the methodology
3 for Lake Charles Pilots in Table DL-6 that you would
4 have included the 2020 data for the LA Harbor Pilots?

5 A. Yes.

6 Q. And would you agree that the 2020 data in Exhibit
7 DL-19 showed lower income -- net income for the LA
8 Harbor Pilots for 2020?

9 A. No. As I mentioned --

10 Q. I realize you did not -- you had the caveat about
11 part-time. So I understand. We'll move on.

12 If you -- let's look at the San Francisco Bar
13 Pilots on your Table for DL-6.

14 You included 2020 for them also; right?

15 A. Yes.

16 Q. So you haven't been consistent, would you agree, in
17 applying the rule to exclude 2020 pilot income due to
18 COVID in your evaluation across the pilotage grounds;
19 right?

20 A. We excluded 2020 income -- excuse me, in the
21 calculation, a go-forward calculation of applying an
22 inflation factor, which was not applied in 2020
23 because it was a year in which economic activity
24 slowed down and reversed.

25 Q. Would you agree that 2021 was also a year that was

1 impacted by COVID?

2 A. Yes.

3 Q. Are you aware that in this current case that PSP has
4 raised the ongoing effect of COVID all the way
5 through mid 2022 as an issue?

6 A. I am not aware of that.

7 Q. Did you ever look at the PSP's petition for interim
8 relief that was filed at the same time as its filing
9 in this case?

10 A. No.

11 Q. So in that filing, it's DL-32X is the exhibit, and I
12 would like to direct your attention to page 3 where
13 you'll see a Footnote 1. And I'll go ahead and just
14 quote that to you.

15 It says, "The Commission's significant
16 overestimate of vessel traffic was foreseeable, given
17 the ongoing, and at the time Order 9 was issued,
18 highly acute effects of the COVID-19 pandemic.
19 However, the Commission expressly refused to factor
20 the effects of the pandemic into PSP's tariff."

21 So this filing was made in mid 2022, and it said
22 that the effects of the pandemic were ongoing.

23 Would you agree?

24 A. I don't see where it states the effects of the
25 pandemic are ongoing.

1 Q. It's in that footnote. Do you see the word
2 "ongoing"?

3 A. Frankly, I don't. But it may be -- I do not see the
4 word "ongoing," if I'm looking at the right footnote.
5 Footnote No. 1. Oh, I see. Yes. Yes, I do see it.

6 Q. Would you agree that the effects of COVID-19 on
7 vessel traffic was ongoing in 2021 and through the
8 first half of 2022?

9 A. Yes.

10 Q. Are you familiar with PSP's pro formas in this case
11 using a test year of 2021?

12 MR. HAGLUND: Objection. Vague. Are you
13 referring to financial pro formas?

14 MS. DeLAPPE: I believe my question was
15 clear, and we've already passed that question now.
16 Now on to a new question.

17 JUDGE HOWARD: I will allow the question.
18 You might need to restate it.

19 BY MS. DeLAPPE:

20 Q. Are you familiar with the fact that PSP, in this
21 case, is using a test year of 2021 for its filings?

22 A. Test -- no.

23 Q. Okay. And so we'll move on, then, from that.

24 So just -- would you agree that 2021 was a
25 COVID-impacted year like 2020?

1 A. Yes.

2 Q. Could you please turn to DL-29X, and that is a PMSA
3 data request, and specifically to page 18, our data
4 request No. 277. And you were asked --

5 A. Yes.

6 Q. -- to explain the basis for your treatment of COVID
7 impacts in the preparation of your comparison of that
8 table at DL-6.

9 Do you see that your response to that question,
10 that you said --

11 A. Yes.

12 Q. -- "In my opinion, a COVID-impacted year like 2020
13 should be considered an outlier"?

14 A. Mm-hmm.

15 Q. Does your testimony explain why some COVID year
16 data -- years data should be excluded but others
17 should be included?

18 A. I think each pilot group, depending on the
19 information -- the information we were supplied, was,
20 if you will, curated, individually curated to develop
21 a projection for 2023.

22 Q. Mr. Lough, I asked whether your testimony explained.
23 So maybe you could point me to the part of the
24 testimony, if there's some part that explained, why
25 sometimes it uses it and sometimes it doesn't.

1 A. Any explanation would be in the paragraph of
2 explanation for each of the pilot groups. So why we
3 include it or excluded any numbers.

4 Q. Just a moment.

5 If you can please turn to your testimony -- I
6 have a couple of additional questions from your
7 original testimony about the pool of workers that
8 prospective pilots are drawn from, including the
9 statistics that you cite from the Bureau of Labor
10 Statistics.

11 So on page 5 of your testimony, you point out
12 that there are -- I'll let you get there. Starting
13 at line 7.

14 Approximately 33,500 captains, mates, and pilots
15 nationwide. And that their median wages are 81,460
16 according to the Bureau of Labor Statistics.

17 A. Yes.

18 Q. And I'll just refer to them as BLS from now on.

19 So in those captains, mates, and pilots, your
20 testimony is that the wages paid to them -- and that
21 includes tugboat captains, ferry boat captains,
22 anyone who is at the command or supervises operations
23 of ships and water vessels; right?

24 A. Yes. I believe that is the definition of the
25 category.

1 Q. Okay. So your testimony is that wages paid to
2 tugboat captains are particularly relevant because
3 the tugboat industry is one of the occupational
4 feeder pipelines from which PSP pilots are drawn;
5 right?

6 A. That was not the point of this answer.

7 Q. So I'm at page 5, line 23.

8 A. Oh, I see what you're saying. Yes. Mm-hmm.

9 Q. Okay. So your estimate for the annual pay for some
10 of these towboat captains was approximately 158,000
11 for 2022?

12 A. I don't see that.

13 Q. It's at line 7.

14 MR. HAGLUND: Page 5? Or 6?

15 MS. DeLAPPE: It should be page 6. Sorry.

16 THE WITNESS: Yes.

17 BY MS. DeLAPPE:

18 Q. And if we move forward to page 9 of your testimony,
19 when you compared to a captain on a tugboat, ferry,
20 or oceangoing vessel, if you look down at line 7,
21 that there was a justifiable, quote, "substantial
22 compensation premium for licensed maritime pilots
23 over vessel captains otherwise employed in the U.S.
24 merchant marine."

25 That was part of your testimony; right?

1 A. Mm-hmm.

2 Q. You quantified a little further down on that page,
3 line 16, that compensation premium to be anywhere
4 between 150,000 to over \$400,000; right?

5 A. Yes.

6 Q. And that pay differential was based on your review of
7 the BLS data?

8 A. It was based on the review of the BLS data compared
9 to the kinds of pay rates we're seeing for pilots,
10 yes.

11 Q. And if you look at your testimony on page 2, line 9,
12 you testified, quote, "It is important to note that I
13 took into account that across the full spectrum of
14 industries and job specialties, including those
15 associated with maritime transportation, the Seattle
16 region's pay rates are among the highest in the
17 country"; right?

18 A. Yes.

19 Q. And that we exceed other parts of the country by --
20 by about 10 percent; right?

21 A. Yes. It was, at that time. Yes.

22 Q. Okay. But you didn't provide the actual BLS
23 statistics that you were relying on for those claims,
24 did you?

25 A. The particular differential of 10 percent was not

1 derived from the BLS data.

2 Q. Could you turn to DL-29X, page 4. And you'll see
3 that that's PMSA data request 250.

4 A. Yes.

5 Q. And you see there that that -- that request is about
6 providing the BLS statistics that I'm talking about
7 for -- that would show the Seattle area?

8 A. I don't see any reference to the Seattle area.

9 Q. Excuse me. I'm trying to find my Exhibit 29X.
10 Great.

11 So there's a -- we asked that you submit as an
12 exhibit the May 2021 bureau -- BLS information for
13 Category 53, 5021. Okay. Agreed. It doesn't say
14 Seattle there.

15 But would you note that it said -- you said there
16 that it would be filed -- you would be filing it with
17 your rebuttal or cross answering testimony on
18 March 10th?

19 A. Yes.

20 Q. Did you file that?

21 A. I cannot verify one way or the other at the moment.

22 Q. I think you'll find that you did not.

23 And, Mr. Lough, if you could also look at the
24 next page of 29X, where it says page 5, data request
25 251.

1 You also didn't -- you did not review the
2 Washington State rates of pay for captains, mates,
3 and pilots when you were making claims about the --
4 this region's pay rates compared to the rest of the
5 country; correct?

6 A. Correct.

7 Q. Okay. So PMSA provided, at Exhibit MM-33, the BLS
8 data. If you can please turn to that. Let me know
9 when you're there.

10 A. I'm on Exhibit MM-33.

11 Q. Great. Page 1. Looking at that page, the mean
12 annual wage for the 33,490 captains, mates, and
13 pilots for May 2021 was 98,330, as you reported in
14 your testimony; correct?

15 A. Yes.

16 Q. And on page 2, the state with the highest employment
17 in this job category was Louisiana; right?

18 A. Yes.

19 Q. And they had seven -- over 7,000 people employed in
20 that area; right?

21 A. 7,140.

22 Q. With an annual mean wage in Louisiana of 119,620?

23 A. Yes.

24 Q. If you turn to page 9 of this exhibit, please, would
25 you agree that only 1,250 people are so employed in

1 Washington?

2 A. Yes.

3 Q. And that their annual mean wage in Washington was
4 \$97,000?

5 A. Yes.

6 Q. So the Louisiana mean wages for workers in this pool
7 of potential pilot trainees are about \$23,000 higher
8 than in Washington?

9 A. I'm not looking at both numbers. But I believe that
10 was the differential.

11 Q. And if you can do the mental math, was that about --
12 would you agree with me that's about 22 percent
13 higher for the Louisiana potential pilot trainees
14 than in Washington?

15 A. Yes.

16 Q. If you could turn, please, to page 4.

17 Do you see there the list of states that pay the
18 most, they're five states, Louisiana, Mississippi,
19 Illinois, Texas, and California as top paying states,
20 at the top of the page?

21 A. Yes.

22 Q. And on page 6, you see there the chart in the middle
23 of page, "Top paying metropolitan areas"?

24 A. Yes.

25 Q. Seattle, Tacoma, Bellevue is not on that list of top

1 ten metropolitan areas for pay?

2 A. You mean by top ten, the top -- the top paying.

3 There's a mix of jobs within this category that are a
4 spectrum of types of jobs. It really depends on, not
5 only the prevailing wage, but also the types of jobs
6 that are included in the category.

7 It's very possible that Seattle has a different
8 mix. And to tell you the truth, within any
9 particular category within that mix supplied, we
10 expect that Seattle would generally be a higher rate.

11 Q. You'll agree with me, however, that
12 Seattle/Bellevue -- Tacoma/Bellevue is not on that
13 list of the title of the table, "Top Paying
14 Metropolitan Areas For Captains, Mates, and Pilots of
15 Water Vessels"?

16 A. It does not appear on this list.

17 Q. So the BLS statistics do not support a claim that
18 Seattle's compensation for mariners exceeded the
19 national average by 10 percent; correct?

20 A. I do not know that BLS statistics, the ones you
21 provided, demonstrate that Seattle was not among the
22 highest pay because of the mix of -- of jobs that are
23 included in the sample -- captains, mates, pilots of
24 water vessels -- versus the others.

25 Q. So if you could listen very carefully to my question,

1 Mr. Lough.

2 One could not infer from the data in this
3 exhibit, MM-33, that Seattle mariners pay exceeds the
4 national average by 10 percent; correct?

5 A. The number that -- there is no Seattle number on this
6 page.

7 Q. If you can turn to the last page, page 9 -- or
8 page 8, excuse me.

9 Do you see there, "Information for
10 Seattle-Tacoma-Bellevue?"

11 A. I do.

12 Q. Have you looked at these BLS statistics ever before?

13 A. I have not seen these statistics.

14 Q. But you cited the national ones in your testimony?

15 A. Yes.

16 Q. Would you agree now with me that these statistics do
17 not support a claim that Seattle area mariners exceed
18 the national average in pay by 10 percent?

19 A. These statistics do not support that.

20 Q. That's all I'm asking. Thank you.

21 Did you research the relative sizes of the
22 national and regional pools of applicants for Puget
23 Sound Pilot trainee positions?

24 A. No.

25 Q. And yet you formed an opinion that the national

1 median net income figure is necessary to achieve
2 because otherwise PSP will suffer from a lack of top
3 flight mariner recruits?

4 A. Yes.

5 Q. And in your opinion, this is the minimal that
6 national net -- median net income figure is the
7 minimal level of income that the UTC should approve
8 as DNI for the Puget Sound Pilots to remain
9 nationally competitive?

10 A. I believe that Puget Sound Pilots should be
11 nationally competitive with other pilot
12 organizations.

13 Q. If you could turn to your testimony, your original
14 testimony, DL-01T at page 18, line 16.

15 And do you see there that your opinion was that
16 the national median net income figure was the minimal
17 level of income the UTC should approve as DNI for the
18 Puget Sound Pilots?

19 A. Yes.

20 Q. So in your opinion, \$543,055 is the minimal level of
21 income necessary for PSP to be nationally competitive
22 for top flight mariner recruits?

23 A. I believe that is a number that, at that point in
24 time, accurately reflected the going rate or the
25 prevailing rate of pay paid for pilots across pilot

1 groups nationwide, adjusted for Seattle rates of pay.

2 Q. And would you agree with me that you did not analyze
3 Washington's pilot training program or licensing to
4 reach that conclusion?

5 A. I did not analyze -- I'm sorry, one more time. No, I
6 did not analyze those programs.

7 Q. Okay. But you rely on your analysis of the size and
8 quality of the pilot -- trainee applicant pool?

9 A. The analysis does not rely on the size or quality of
10 the trainee applicant pool.

11 Q. So you performed no analysis either to test your
12 hypothesis that -- about a pilot group operating
13 under a national net income, that they would suffer
14 from a lack of recruits?

15 A. I'm not sure I understand the question.

16 Q. Did you perform some analysis to test what -- your
17 opinion that a pilot group operating under a
18 nation -- that's under the national net income level
19 would suffer from a lack of recruits?

20 A. I believe that if Puget Sound Pilots does not offer a
21 rate of pay aligned with the prevailing nationwide
22 rate that their ability to recruit will be
23 compromised.

24 Q. So if you could please turn to Exhibit 29X, page 26.
25 And that's PMSA data request 285. Let me know if

1 you're there. I'll just read it.

2 "Further regarding your testimony at" -- I'll
3 skip the citation -- "Please admit that you did not
4 perform any analysis in preparation of your testimony
5 to test your allegation that a pilot group with a net
6 income below a median national net income figure
7 results in a lack of top flight mariner recruits."

8 And your response?

9 A. Admit. Yes.

10 Q. "Admit." Thank you.

11 And in fact, you simply based your opinion on
12 discussions with PSP and the information PSP provided
13 you; correct?

14 A. No. I did not develop that opinion in discussions
15 with PSP.

16 Q. If you could please turn back to -- one page in
17 Exhibit DL-29X, page 25, in response to data request
18 283, and read your response, please. I'll read it
19 aloud.

20 "This conclusion was based upon my discussions
21 with PSP leadership, my investigation to locations of
22 maritime academies throughout the United States, and
23 my review of pertinent discussions in the rate orders
24 that are attached as exhibits to my testimony."

25 Is that correct?

1 A. Mm-hmm. Yes.

2 Q. Okay.

3 MS. DeLAPPE: Thank you. No further
4 questions.

5 MR. HAGLUND: I was just going to bring up
6 the time limit. So good timing.

7 Your Honor, could we take a brief lunch break?
8 I think I will have even shorter redirect if we have
9 a break.

10 JUDGE HOWARD: Sorry, go ahead.

11 MS. DeLAPPE: I would prefer if we could
12 just wrap up with Mr. Lough before lunch.

13 JUDGE HOWARD: I think it would be best to
14 at least conclude the -- this redirect, and Staff has
15 a -- has a comparatively very short cross of
16 Mr. Lough.

17 So I'd like to -- I'd like to finish this
18 redirect, take a lunch, and then have Staff's cross.

19 So if you would please proceed with the
20 redirect for this round of cross.

21 THE WITNESS: I'm not able. I'm not able to
22 remain that long.

23 MR. HAGLUND: Well, Your Honor, I'm just
24 hearing from Mr. Lough that we probably should just
25 plow straight through, including Staff. He has a

1 commitment I was unaware of. I'll be done in just a
2 few minutes and Staff can proceed, if that is okay
3 with you?

4 JUDGE HOWARD: That's fine. Yes. Let's
5 just proceed then.

6 REDIRECT EXAMINATION

7 BY MR. HAGLUND:

8 Q. If we could go back to that MM-33 exhibit, which was
9 the statistics regarding captains, mates, and pilots.

10 Mr. Lough, you were trying to explain that -- let
11 me ask it this way.

12 Could the -- could the number -- could the
13 relative numbers in the three positions, captains
14 mates, pilots, in the given state affect the average
15 income for that combined category?

16 A. Yes.

17 Q. So do you think one can draw any conclusions
18 comparing the state averages for those three -- these
19 three different positions as to pilots alone?

20 A. No.

21 Q. With respect to the -- no further questions.

22 JUDGE HOWARD: All right. Mr. Callaghan.

23 MR. CALLAGHAN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. CALLAGHAN:

1 Q. Good afternoon, Mr. Lough.

2 A. Good afternoon.

3 Q. Do you have a copy of your rebuttal testimony with
4 you?

5 A. Yes.

6 Q. Could you turn to page 7?

7 A. Yes.

8 Q. All right. So you state there, "My testimony
9 provides an accurate, credible, justifiable, and
10 defensible portrayal of the current median rate of
11 about \$560,000; correct?

12 A. 574,287, yes.

13 Q. So just to be clear, didn't you file a corrected
14 figure on Tuesday of this week?

15 MR. HAGLUND: Objection, Your Honor. You
16 struck that.

17 JUDGE HOWARD: That is correct, Mr. Haglund.

18 MR. CALLAGHAN: All right.

19 BY MR. CALLAGHAN:

20 Q. So 574; correct?

21 A. Yes.

22 Q. All right. And on page 2 of your rebuttal testimony,
23 you state that, quote, "Experiences and observations
24 of employers across all sectors indicate that a rate
25 at or above the mid point median of rates among

1 comparable organizations will be considered fair and
2 respectful treatment."

3 Is that accurate?

4 A. Yes.

5 Q. All right. So is your recommendation to the
6 Commission to increase PSP's DNI to at least 574K?

7 A. I think the Commission should consider a range of
8 possibilities within which 574,000 should be
9 included.

10 Q. So do you have a specific recommendation, a specific
11 DNI number that you recommend?

12 A. Yes, based on information that I have learned since
13 this rebuttal was filed -- it's a moving target.
14 We're always getting new information. And we're
15 trying to project a number. The range that I would
16 suggest at a low end that the Commission should
17 consider would be 500,000. And the range that I
18 would suggest as a high end would be 600,000.

19 Q. So in your opinion, 500,000 would still be considered
20 fair and reasonable treatment; is that right?

21 A. I think it is within a range that would be considered
22 fair and reasonable treatment.

23 Q. And the currently authorized DNI for PSP is around
24 \$410,000, isn't it?

25 A. Yes.

1 Q. That's quite an increase; wouldn't you agree?

2 A. It is. It's not unprecedented in terms of what other
3 pilot groups have done.

4 Q. You would agree it's --

5 A. The --

6 Q. -- a significant increase?

7 A. Oh, significant increase? Absolutely.

8 Q. And beginning on page 1 of your rebuttal testimony
9 and following into page 2, you discuss whether you
10 think that Staff's DNI proposal is fair, just,
11 reasonable, and sufficient; is that right?

12 A. Yes.

13 Q. Okay. Now, when you're using those words in your
14 rebuttal testimony, are you intending them to have
15 just their plain, everyday dictionary meaning? Or do
16 you mean them in the sense -- the specific meaning
17 that the Commission uses in rate cases?

18 A. I was attempting to use them in the context that the
19 Commission uses them in consideration of rate cases.

20 Q. Okay. So in your rebuttal testimony on page 2, you
21 state that "PMSA's position is not just."

22 So in that instance, you're using the word "just"
23 in the sense that the Commission uses that word in
24 rate cases.

25 A. I'm attempting to do so.

1 Q. Okay. So I want to discuss a little bit your
2 statement about a rate at or above the -- the median
3 point.

4 So you've stated that you're actually
5 recommending a range.

6 And the lower end of that range is 500,000;
7 correct?

8 A. Yes.

9 Q. Okay. So if agencies that set rates for pilotage
10 groups across the country, if they all decided that
11 they were going to set those rates at the median, if
12 they were below it, what would that do to rates over
13 the long term?

14 A. If all aligned with the median?

15 Q. If they were -- if the -- if the agencies were
16 looking at the groups that were under the median and
17 decided, we're going to set them at or above the
18 median, what would happen?

19 A. Then I suspect the median itself would -- would
20 increase the following year.

21 Q. Okay. And isn't the main purpose of rate setting to
22 avoid a situation where customers are forced to pay
23 monopoly prices?

24 A. I don't think that's monopoly in what you described
25 in the sense of collusion.

1 MR. CALLAGHAN: Okay. No further questions,
2 Your Honor. Thank you.

3 JUDGE HOWARD: Any redirect following that
4 cross?

5 MR. HAGLUND: Yes.

6 REDIRECT EXAMINATION

7 BY MR. HAGLUND:

8 Q. In -- how would you describe the factors you think
9 the Commission should consider in exercising its
10 discretion to select a particular level of DNI for
11 the Puget Sound Pilots in this rate case?

12 A. I think the Commission should consider what is fair.
13 And fair includes the result that is aligned with the
14 rates of comparable employers of comparable
15 positions. The purposes of the analysis that we
16 performed is to provide an indication, a range, of
17 what that should be. And the Commission should
18 consider that range in making its final decision.

19 Should it be in the middle of the range?
20 Perhaps. There are employers and organizations that
21 target or aim their rates of pay higher than the
22 middle in order to ensure the ability to attract and
23 retain the top talent in the candidate pool.

24 So that is what I would like the Commission to
25 consider, is that range of possibilities.

1 Q. And when you use the term "employers," are you
2 referring to pilot groups?

3 A. In this case, yes. I was using the term "employers"
4 to refer to beyond the pilot group sector. But, yes.

5 MR. HAGLUND: No further questions.

6 JUDGE HOWARD: All right. Do we have any
7 questions from the bench for this witness?

8 COMMISSIONER DOUMIT: Nothing here, Your
9 Honor. Thank you.

10 COMMISSIONER RENDAHL: I don't have any.
11 Thank you, Your Honor.

12 CHAIR DANNER: None from me.

13 JUDGE HOWARD: All right. Hearing none.
14 Mr. Lough, thank you for your testimony. You are
15 excused from the remainder of the hearing.

16 We will break for lunch. We will take a --
17 approximately 45-minute lunch break. Sorry? Was
18 someone trying to raise a point or a concern?

19 We'll take approximately a 45-minute lunch
20 break. We will rejoin here at 1:40. I will see you
21 all back then. We are off the record. Thank you.

22 (A break was taken from
23 12:57 p.m. to 1:43 p.m.)

24 JUDGE HOWARD: We are resuming here at 1:43
25 p.m. after our lunch. In the interest of witness

1 availability, we are going to turn to two PMSA
2 witnesses who are only available today. That's
3 Kathy Metcalf and Captain Moore.

4 Before we turn to the examination of them, I
5 wanted to briefly note for the record that, this
6 morning, I had a conversation with the parties off
7 the record about continuing on Friday. Right now the
8 plan is to continue the examination of witnesses as
9 necessary, starting at 9:00 a.m. tomorrow, Friday.

10 Commissioner Rendahl will be briefly stepping
11 away from the hearing in midmorning to attend an
12 appointment. But she will return, as I understand,
13 and she will review the record and the transcript for
14 the portion she misses. And the parties indicated no
15 objection to that.

16 So with that, Ms. Metcalf, can you see and hear
17 me all right?

18 THE WITNESS: Yes, sir. I can. Thank you
19 for your flexibility.

20 JUDGE HOWARD: No. Thank you.

21 If you would please raise your right hand, I
22 will swear you in.

23 * * * * *

24 Kathy Metcalf, having been first duly sworn, was
25 examined and testified as follows:

1 THE WITNESS: I do.

2 JUDGE HOWARD: Thank you. Ms. DeLappe,
3 would you please introduce the witness.

4 MS. DeLAPPE: Ms. Metcalf, if you could
5 please state your full name.

6 THE WITNESS: Yes. My name is
7 Kathy Metcalf.

8 MS. DeLAPPE: And who is your employer?

9 THE WITNESS: I am the president and CEO of
10 the Chamber of Shipping of America.

11 MS. DeLAPPE: As you know, your pre-filed
12 testimony and exhibits have already been accepted
13 into evidence.

14 Are you now adopting those under oath?

15 THE WITNESS: I am.

16 MS. DeLAPPE: I tender the witness.

17 JUDGE HOWARD: All right. PSP indicated
18 cross, and you may proceed.

19 MR. HAGLUND: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. HAGLUND:

22 Q. Ms. Metcalf, I'm Mike Haglund, representing Puget
23 Sound Pilots. Is it fair to say that your -- the
24 organization that you are the president of is -- acts
25 as a trade association for company -- U.S. companies

1 operating vessels throughout the world?

2 A. That is correct, both U.S. and foreign flag.

3 Q. And would it be fair to say that the vast majority of
4 the flag -- of the ships operated by your Chamber of
5 Shipping members are foreign flag vessels?

6 A. They're at least 50 percent, perhaps a little bit
7 more. But we have significant U.S. flag vessel
8 owners and operators as well.

9 Q. And is your shipping -- my apologies. I didn't
10 realize I wasn't on the video.

11 A. I've seen you before, but nice to see you again.

12 Q. Thank you. Same here.

13 Now, in your testimony, you state that the
14 process or the practice of trying to -- on page 7 of
15 your testimony, if we could go to KJM-1T, page 7.

16 And if we go to the question and answer at the
17 bottom of the page, you can look at the question
18 there, it's "Do you agree that the vessels that call
19 on Puget Sound can evade their legal responsibilities
20 through the use of foreign flags?"

21 And you say, "The vast majority of vessels cannot
22 and will not evade their legal responsibilities."

23 And you go on to note, in the middle there, that
24 "risk management is not an illegal activity."

25 But to -- a little more specific, let me ask you

1 some questions.

2 You say, "The vast majority of vessels cannot and
3 will not evade their legal responsibilities." But,
4 Ms. Metcalf, would you acknowledge that there is a
5 portion of the foreign flag fleet flying the seas of
6 the world that are owned by individuals, each ship in
7 a single shell corporation, where history shows there
8 is some risk that those owners would strive to evade
9 their legal responsibilities in the event of a major
10 casualty?

11 A. There is some risk. Yes, sir.

12 Q. Okay. And that risk would include the potential for
13 a foreign flag vessel that suffered a significant
14 casualty, including an oil spill, there would be
15 some -- and where that vessel was owned by a single
16 shell corporation and registered under a flag of
17 convenience -- Liberia, Monrovia, Marshall Islands,
18 one of those or another flag of convenience, say
19 Panama -- there is risk that, in a major casualty,
20 that owner of the vessel in a single shell
21 corporation could abandon the ship and there would
22 not be any assets to -- or oil spill clean up and
23 other losses associated with that casualty?

24 A. That is a possibility. If I may, sir, to expand just
25 a little bit?

1 Q. Sure. Go ahead.

2 A. We really didn't need to get involved in this. But
3 the one thing that hit me square in the face with
4 Mr. Costanzo's testimony, which I'm sure you'll get
5 to, was that the picture he was painting was that it
6 was a significant number. And I felt obligated to
7 let the Commissioners know what is the real world out
8 there. Yes, there are always outliers -- higher
9 performers, lower performers, and average
10 performers -- so we cannot ever eliminate the risk of
11 that single-hull concern that you've just eliminated.
12 We try. But there will always be --

13 Q. Understood.

14 A. -- those outliers. Thank you for letting me expand.

15 Q. Sure. And you've been in the maritime world for a
16 long period of time, going back to -- going to Kings
17 Point U.S. Merchant Academy; right?

18 A. Yes, sir.

19 Q. And you got a law degree and have been involved in
20 the maritime industry throughout a long career;
21 correct?

22 A. Yes, sir.

23 Q. And would you agree that the compulsory pilotage
24 system administered by 24 states in the United States
25 and by the Coast Guard in the Great Lakes is the --

1 is an extraordinarily important frontline of defense
2 against the potential risk for those outlier vessels
3 that may come into Puget Sound or Delaware or New
4 York or New Orleans with a variety of serious issues
5 that could lead to a casualty?

6 A. The role of pilots all over the United States is --
7 is not debatable. It is a critical element in
8 maintaining the safety and environmental
9 responsibility of any vessel, regardless of flag,
10 operating in U.S. waters, yes.

11 Q. And would you agree that it's the pilotage system in
12 a given state waterway where compulsory pilotage is
13 required that is the comprehensive first line of
14 defense against a problem, because the law in those
15 states requires that every move a -- a foreign flag
16 vessel makes in those state waterways must be
17 under -- must be directed by a state license?

18 A. No, in one respect. That one respect is, to me, the
19 first line of defense, assuring vessels are compliant
20 and operating safely and environmentally responsibly,
21 if they have an ethical and committed ship owner,
22 manager, and charterer that implements and strives to
23 exceed the requirements implemented by the IMO and
24 port states as well.

25 The second line of defense, where those vessels

1 do not meet that standard, which is the standard we
2 all should be striving for, is the pilot that picks
3 up that vessel at the pilot station.

4 Q. And the -- the pilots -- let's take the example of
5 Puget Sound.

6 For 100 percent of the foreign flag and domestic
7 carriers that are required to take a pilot that come
8 to Puget Sound and enter Puget Sound in the vicinity,
9 they enter in the vicinity of Port Angeles, where the
10 pilot station is located.

11 Are you familiar with that fact?

12 A. Yes, sir, I am.

13 Q. And 100 percent of those foreign flag vessels that
14 are legally required to have a pilot, the pilot
15 boards the ship on an incoming voyage to Puget Sound
16 in the vicinity of Port Angeles off of the pilot
17 station; correct?

18 A. That's correct.

19 Q. And when it -- and it's the pilot who must -- while
20 he or she is aboard, go through the master pilot
21 exchange to learn whether there are any issues of
22 concern, to -- to familiarize themselves with the --
23 with the equipment, the propulsion system, and the
24 ship's capability before beginning the impound
25 transit to a dock located somewhere in Puget Sound.

1 Is that all correct?

2 A. Yes, sir.

3 Q. And if one were to compare the 100 percent
4 requirement of a maritime pilot, a Puget Sound pilot
5 on every foreign flag ship entering Puget Sound to
6 the number of -- or to the percentage of those same
7 vessels, in the neighborhood of 7,000 inbound and
8 outbound transits per year, if we were to compare the
9 100 percent requirement that pilots be of [audio
10 distortion] all those ships, is it fair to say that
11 14 percent or fewer of those vessels will actually be
12 inspected by the Coast Guard?

13 A. During their visit in Puget Sound, I think that's a
14 safe number, based upon the port state control data
15 that was provided actually in one of my exhibits, in
16 the port state control report. The vessel could have
17 been inspected fairly recently at a previous U.S.
18 port of call. But, yes, that is correct for the
19 vessels calling in Puget Sound.

20 JUDGE HOWARD: Mr. Haglund, I'm sorry to
21 interrupt. But I might suggest using a phone line
22 to -- to call in for your audio because occasionally
23 we are missing a word. It's not every question, but
24 occasionally we are missing a word from your end.

25 MR. HAGLUND: Okay. We will -- one thing

1 that we might try, Your Honor, is the -- the -- the
2 microphone was on the other side of my computer. Is
3 it better now? Or --

4 JUDGE HOWARD: Possibly, yes. I'm not
5 certain if it's a bandwidth issue or a microphone
6 issue.

7 MR. HAGLUND: Well, I'd make this
8 suggestion -- well, I -- I'll defer to Your Honor.
9 You have more experience with these situations. Do
10 you want us to go ahead and phone in now, or do you
11 want to try for a few more minutes with the
12 microphone much closer to me?

13 JUDGE HOWARD: This -- this sounds like
14 it -- like it may work. This sounds like it may work
15 maybe. Let's try this.

16 MR. HAGLUND: Okay. All right. Thank you.

17 BY MR. HAGLUND:

18 Q. So, Ms. Metcalf, just to make sure that the record is
19 clear here.

20 We're in agreement that, of the vessels calling
21 Puget Sound, they -- approximately 14 percent will
22 actually be inspected by the Coast Guard at some
23 point during the course of their stay in the Puget
24 Sound?

25 A. That -- that is to the best of my knowledge, sir,

1 what the port state control report reflects.

2 Q. And with respect to the port state control Coast
3 Guard checklist, are you familiar with that document?

4 A. To some degree, yes, sir.

5 Q. And as to that -- let me find the exhibit number.
6 While we locate that document, let me ask you this.

7 Would you agree that the -- KJM-4, please.

8 A. While they're bringing that up, I want to thank you
9 for pushing it up. I had indicated I didn't have any
10 conjurers in my home office here to circle through
11 these. So I've tried to download as much as I can
12 without covering myself up in papers.

13 Q. Sure. Sure.

14 So -- and I think we -- if we could go to page 1.

15 No, that's the annual report. I'm looking for
16 the checklist. We'll -- we'll get back to this in a
17 minute.

18 Now, in your testimony, there were -- you
19 disagreed with Mr. Costanzo -- with some of the
20 testimony in Mitchell -- Captain Mitchell Stoller and
21 Charles Costanzo's testimony that the risks of
22 pilotage were persistent and growing, in part due to
23 the ever increasing size of ships in the world's
24 fleet.

25 Do you recall that?

1 A. I do.

2 Q. And in your testimony, you acknowledged that, indeed,
3 ship sizes are continuing to grow, as they have for
4 centuries?

5 A. Correct.

6 Q. And -- but you -- you state in your testimony that
7 you don't consider the risks associated with pilotage
8 to be persistent and growing, but changing.

9 Do you recall that?

10 A. I do.

11 Q. And you emphasized port state control, improved
12 navigational technology as two items that were
13 reducing the increasing risk associated with larger
14 ships.

15 Do you recall that?

16 A. I do.

17 Q. Okay. So we now -- back to the port state control
18 issue. A part of that is the inspections that the
19 Coast Guard performs while the ship is in port; is
20 that right?

21 A. Yes.

22 Q. And are you familiar with this checklist, which is
23 Exhibit CPC-25?

24 A. I -- I am not intimately familiar, but I have
25 reviewed it in the past. Yes, sir.

1 Q. Okay. If we can go to page 6.

2 Here, this is early in this document. And would
3 it be fair to say that the "Security Examination"
4 there and "Verify Security Training and Records,"
5 that -- and "Examine the Mooring System/Equipment,"
6 that those are going to be -- that you've got a
7 checklist here with boxes to check, and the
8 requirement for the Coast Guard inspector is to spend
9 the time to observe either these records or logs or
10 the pieces of equipment aboard the ship?

11 A. Yes. Correct.

12 Q. We can go to page 12. Here, for example, is
13 certain -- checking to see that certain emergency
14 procedures are in place. And that would be a matter
15 of asking the ship to be able to review those
16 notebooks that would -- typically notebooks, that
17 would contain these sorts of ship procedures, this
18 one applying to emergency procedures and cyber.

19 Is that a fair statement?

20 A. Yes, sir.

21 Q. And if we could go to page 15.

22 If we look at 54, Ms. Metcalf, the -- the voyage
23 data recorder, is that a requirement of all
24 oceangoing cargo vessels pursuant to SOLAS at this
25 point in time?

1 A. That is correct.

2 Q. And the purpose of the voyage data recorder is
3 similar to that of the black box on an airplane?

4 A. That is correct.

5 Q. And does the VDR record oral communications on the
6 bridge of the ship?

7 A. The new VDRs, I believe, are capturing that. The old
8 VDRs captured data sets from principal pieces of
9 navigational equipment, but I believe they do capture
10 audio. And in some cases, in port state control
11 exams, I understand that the inspector is actually --
12 in some cases, actually look to see what the stored
13 information looked like, rather than just looking at
14 the box.

15 Q. And here for No. 54, "Examine Voyage Data Recorder,"
16 would you agree that what's happening here, in terms
17 of checking this box by the Coast Guard inspector, is
18 to verify that there is such a device on board and
19 that it has a certificate of compliance?

20 A. Yes, sir, I would.

21 Q. If we could scroll -- go back to the body of this
22 page and look at 55.

23 This relates to checking to -- it requires the
24 inspector to "Examine the Automatic Identification
25 System" or IAS[sic], and says -- there's a bullet

1 there that says "Witness Operation."

2 What's your understanding about what this
3 entails?

4 A. My understanding, that this particular item would be
5 obviously to physically see the equipment and to
6 determine if there had been an AIS feed on the
7 vessel, the vessel's prior operation into the berth.

8 Q. Are you familiar with the fact that a -- the bridge
9 crew on a foreign flag vessel that's subject to the
10 SOLAS requirements has the ability to turn off the
11 AIS machine or device?

12 A. Yes, I do. And that was a result of some security
13 concerns in other parts of the world, where ships
14 were not secure and broadcasting their location,
15 particularly in Gulf of Guinea and the Horn of
16 Africa, with some of the piracy.

17 But, yes, that should never be done unless there
18 are very definite security reasons presented before
19 the captain and detailed in the log book.

20 Q. So there are some exemptions for the use of AIS in
21 areas where that system could endanger the vessel and
22 her crew, like the Horn of Africa, where the piracy
23 issues are significant; is that correct?

24 A. Yes. But -- and -- the answer is yes. But I
25 think -- I'm not trying to guess where you're going

1 to. That those exemptions do not cover the vessel
2 that was covered in some of the testimony presented
3 by PSP, on the vessel that had had problems in Puget
4 Sound and decided to depart Puget Sound and turn its
5 own AIS off. That is not covered under the
6 exemptions.

7 Q. Okay. You're showing your legal background here.
8 You're anticipating where I was going. Let me
9 represent to you that in the record in this case,
10 that it was actually an issue involving a foreign
11 flag ship that was going into the Columbia River,
12 encountered a number of issues, and was ordered to
13 steam south to get repairs in the San Francisco Bay
14 Area, and turned its AIS off and did not do as
15 ordered by the Coast Guard. That's a summary of what
16 testimony by a Captain Jordan of the Columbia River
17 Bar Pilots in this proceeding relates.

18 I take it from your comment, Ms. Metcalf, that
19 that sort of action by a foreign flag ship would not
20 be covered by any exemption, and, in fact, is just an
21 absolutely wrong thing for that ship to have done.

22 A. There's no question that it was the wrong thing for
23 that ship to have done. And I don't know if we want
24 to get too technical on nautical terms. But that
25 brings to mind "hang them from the highest yardarm."

1 That is absolutely not the purpose of the AIS system,
2 under that situation.

3 Q. Let me turn back to some issues that relate to the
4 risk associated with certain practices of portions of
5 the world's fleet of oceangoing cargo vessels. And
6 you note in your -- I referenced earlier that you
7 noted in your testimony that risk management is not
8 an illegal activity. And, of course, it's not.

9 But would you agree that Professor Vuillemeys's
10 article is correct in documenting a very substantial
11 increase in the use of flag of convenience registries
12 over the last 20 years?

13 MS. DeLAPPE: Could counsel please state
14 what exhibit he's referring to?

15 MR. HAGLUND: I'm referring to --

16 THE WITNESS: CPC-17, I believe, sir.

17 BY MR. HAGLUND:

18 Q. You're right. Thank you.

19 You -- go ahead.

20 A. This isn't the lawyer in me. I just like to try and
21 do my homework so I'm more valuable to the people
22 that are listening to what you've been kind enough to
23 let me talk about.

24 I agree with a great deal of that. Particularly
25 with the corporate structuring, the single-hull

1 corporation. I do not agree in the piece of it that
2 suggests the purpose of flags of convenience --
3 which, by the way, that term more or less went out
4 20 years ago in the maritime profession. It's called
5 an open registry. We can call it whatever you like.
6 But the piece that suggests that you can evade your
7 legal regulatory statutory obligations simply does
8 not take into account the ever increasing robustness
9 of flag state and port state controlled programs and
10 the incredible amount of work that's been done in the
11 last 20 years at IMO, including a flag state model
12 audit program where other IMO countries actually go
13 into a country and audit their implementation and
14 enforcement as a flag state.

15 I -- I can't disagree with most of the -- the
16 conclusions in here about the ability to create a
17 corporate structure that allows for risk management
18 over a shipping company with a single hull. But I do
19 disagree with provisions about ability to re -- to
20 disregard safety and environmental regulations.

21 Q. But you acknowledged earlier in your testimony this
22 afternoon that it is possible and it does happen for
23 a foreign flag ship owner who has organized their
24 fleet into single-shell corporations to abandon the
25 ship following a major casualty?

1 A. It is possible. Yes, sir.

2 Q. And your -- you've been in this industry a long time.

3 There's no question, is there, Ms. Metcalf, that the

4 P&I club, protection and indemnity club, insurance

5 policies that ship owners purchase from P&I clubs are

6 indemnity policies with an absolute requirement that

7 the insured first pay for the given loss before

8 becoming entitled to indemnity reimbursement from the

9 P&I club insurance company; correct?

10 A. With all due respect, sir, I am not an expert in

11 maritime insurance. And certainly not the details of

12 various types of coverage. It is my understanding

13 that that is -- your statement is correct about the

14 way P&I clubs -- but I am not the expert to discuss

15 maritime insurance.

16 Q. Okay. A slightly different topic -- and let me just

17 find out if you're knowledgeable about this -- is

18 that the federal government, following the Exxon

19 Valdez oil spill, congress passed and the president

20 signed into law the Oil Pollution Act of 1990, known

21 in shorthand as OPA 90.

22 You're familiar with that statute?

23 A. Yes, sir. Generally.

24 Q. And it began a system where vessels calling in U.S.

25 waters, depending upon whether they're an oil tanker

1 or a non-tank vessel, there are certain levels of
2 financial responsibility that must be posted for
3 those vessels to enter U.S. waters.

4 You're familiar with those requirements stemming
5 from OPA 90?

6 A. I'm familiar with those requirements in general.

7 Q. Okay. And are you aware of the fact that when a --
8 when those certificates of financial responsibility
9 are issued, they're issued by a surety that is
10 guaranteeing the amount of the -- of the required
11 level of -- of financial responsibility, which is
12 hundreds of millions of dollars in the case of an oil
13 tanker, that there's an insurance company standing
14 behind that legal obligation reflected by that amount
15 required by OPA 90.

16 Are you familiar with that system?

17 A. Well, I was generally familiar. But I got more
18 familiar this morning with one of your witnesses that
19 you had put on. Which -- it was a good day; I
20 learned something new. So, yes, sir.

21 Q. Okay. You have no reason to disagree with the
22 information related by Sean McCarthy this morning?

23 A. Well, relative to the surety and the COFR issue, yes,
24 sir, I don't have any objections.

25 Q. Okay. So let me ask you this, when it comes to

1 Washington State, as a matter of policy, which, in
2 2022, passed legislation requiring certain sized
3 vessels to post a certificate of -- of financial
4 responsibility of \$1 billion, to the extent there is
5 risk associated with the potential for a single-shell
6 corporation to evade that by abandoning the vessel,
7 would your organization be supportive of requiring a
8 federal parallel in Washington State for certificates
9 of financial responsibility where a surety bond is
10 required?

11 A. My organization has no position on that issue. But I
12 think, in general, our members would support anything
13 that would ensure responsible parties are held to pay
14 for the damage that they've caused. And in that
15 respect -- of course, I -- I have to brag a little
16 bit. We've got the -- the top of the line member
17 companies that we don't have to really deal with them
18 disappearing and running off into the -- to the
19 sunset.

20 But I think it's only fair that there be
21 provisions made to be sure there's not an ability to
22 evade the need to clean up a mess that your vessel
23 made.

24 So I don't have an official position from my
25 members on this. But I think, knowing the way that

1 they approach safety and environmental compliance,
2 that would be a safe general comment for me to make.

3 Q. Now, would you acknowledge that, as ships become more
4 technologically advanced, that there are risks that
5 come with that that did not exist with -- before that
6 technology was in place?

7 And let me give you an example.

8 Are you familiar with the capsizing of the Ro-Ro
9 ship Golden Ray off the coast of Georgia?

10 A. Yes, sir.

11 Q. Are you familiar with what happened there?

12 A. Yes, sir. She turned turtle. She was -- she was
13 improperly loaded. It was a stability issue. Which
14 I might add, any time a vessel is loaded improperly
15 to that extent -- and I know she was a large vessel,
16 but any vessel, whatever size, is going to do that
17 with poor stability.

18 Q. And is it fair to say that that was a relatively new
19 ship with a computerized stability system to arrange
20 the ballast in a way that was designed to enable the
21 ship to sail safely?

22 A. Well, I'm old enough, as you can see from my less
23 than brown hair, to suggest that I approach
24 technology development with somewhat of an old
25 timer's view. But I still think that developing

1 technology only becomes a tool if the humans that use
2 it use it properly. And in my opinion -- I have not
3 read the full accident report on the Golden Ray. But
4 clearly the summaries that I've read, the human piece
5 of the stability and ballasting system didn't work
6 quite as well as the technology did -- was supposed
7 to.

8 Q. And in fact, in that particular incident, a member of
9 the crew inputted substantially incorrect figures
10 into the computerized ballast stability system. And
11 that was found in the NTSB accident report, that's an
12 exhibit in this case, to be the cause of the loss.

13 Are you familiar with that?

14 A. Yes. But I am not familiar -- I'm not comfortable
15 saying new technology increased risk. New technology
16 should be reducing the risk if it's used properly
17 with the human interface. But I would agree
18 precisely with what you said, the human inputted the
19 wrong information.

20 So, yes, in this case, technology -- well,
21 there's nothing to say that the human doing it by
22 hand the old way wouldn't have resulted in the same
23 error.

24 Q. Fair enough.

25 Were you aware that that particular incident has

1 become -- I think it's now the single largest vessel
2 casualty in U.S. history, with a total casualty cost
3 of over \$800 million at this point, much of it
4 associated with the extraordinarily expensive removal
5 cost to remove her from Georgia waters?

6 A. I wasn't aware it exceeded, say, the Exxon Valdez.
7 But given today's value of the dollar, I can only --
8 I can only expect that to be true. I have no reasons
9 to doubt your statement.

10 And I will add, as a tip of my hat to a body of
11 the marine transportation system that I respect
12 greatly, which is pilots, I understand it could have
13 been much worse if the pilot hadn't taken the action
14 that he did. So in that respect, congratulations to
15 the pilot that was on board. I think he was a fellow
16 alumni, but that doesn't matter.

17 Q. A fellow alumni of Kings Point?

18 A. Yeah, I'm not sure. I know he was an alumni of one
19 of our sister maritime academies. And God bless him
20 for doing what he did to try and mitigate what could
21 have been even worse.

22 Q. And do you recall that what the pilot did was react
23 extremely quickly, as he was experiencing the keeling
24 over of the vessel, he threw the rudder hard over and
25 put extra power to the -- to the propulsion system to

1 get her out of the channel before she, as you put it,
2 turned turtle and capsized?

3 A. Yes, sir.

4 Q. Now, would you acknowledge, Ms. Metcalf, that
5 economic pressures and considerations can sometimes
6 influence the captain or bridge crew on an oceangoing
7 vessel to take actions that are unsafe?

8 A. My experience is absolutely not. But if you review
9 some of the casualty experiences, if you're going to
10 be enlightened by the full story, obviously in some
11 cases it has. It should not ever do that.

12 Q. Well, let me just use an example that I'm sure you
13 have reviewed. And one of the exhibits in the case
14 that was identified for you to know, it might come up
15 in our discussions this afternoon, was the accident
16 report into the complete loss of the TOTE vessel El
17 Faro in October of 2015, and the loss, I think, of 34
18 lives. When the captain allowed commercial
19 considerations of trying to maintain the time frame
20 for the voyage and went through a hurricane rather
21 than around it, and it was so severe that it caused
22 the ship to capsize and sink with all lives lost.

23 Would you concur that that situation involving
24 the El Faro is an example of what should never
25 happen? He should have steamed around the storm?

1 A. I've not read the NTSB -- the full NTSB report. I
2 will -- I will tell you that the owner of that vessel
3 is one of our member companies. And I will tell you
4 how hard that incident hit, not only the families of
5 the crews, but the people that manage that company
6 who are very dedicated to safety and health.

7 From what I understood, the way the weather
8 patterns were working at the time or a few hours
9 before that, is that the captain had tried to make a
10 decision to place himself on the safe side of the
11 storm, and the storm did a fish hook. The storm
12 actually changed directions in an unusual way. It
13 fish hooked him back into the dangerous side of the
14 storm. Now, that is not from the NTSB record. That
15 is just from what I understand from reading,
16 actually, general media that described it.

17 But if the NTSB found that to be the case, then,
18 yeah. But I cannot imagine any captain, particularly
19 a U.S. flag captain, doing something like that for
20 economic purposes. Clearly -- clearly you don't do
21 much for economic purposes if the vessel is not only
22 late but never gets there at all.

23 Q. Well, the NTSB report is in the record. It speaks
24 for itself. And it did point to economic pressures
25 as a contributing cause to that -- the loss of that

1 ship. So I'll leave it there.

2 But on this same topic, let me ask you this: In
3 the record, there is a -- in Captain Carlson's
4 testimony, there is reference to a -- to an e-mail
5 exchange in which the owner of a container ship was
6 very unhappy that the pilots were unwilling to bring
7 a ship in at, I think it was a 50-foot draft, because
8 of not having enough information about the tow to a
9 berth having been reconstructed with accurate
10 soundings of exactly where it lay, relative to the --
11 to the -- to the river -- or to the gauge.

12 And would you agree, Ms. Metcalf, as a -- as an
13 absolute principle of safety, that a pilot, a
14 State-licensed pilot, like every one of the Puget
15 Sounds Pilots, cannot and should not allow economic
16 pressures to affect how they do their job as a pilot?

17 A. I completely agree with that, sir.

18 Q. And would you agree that safety is absolutely the
19 first concern of the maritime pilot and the informing
20 principle of compulsory pilotage systems throughout
21 the United States?

22 A. Could you repeat that? I'm sorry. I thought you
23 were going -- please, go ahead. I'm sorry.

24 Q. It's okay. No problem.

25 Would you agree that safety is the overriding and

1 informing principle of how a pilot should be
2 deploying their navigation skills, directing a
3 vessel's navigation during every pilotage assignment
4 that they partake in?

5 A. I think that should be the number one priority of
6 anybody aboard that floating object, especially the
7 pilot. I mean, that's why -- that's why companies
8 hate pilots, for their unique local knowledge and
9 ability to see things that perhaps the ship's crew
10 can't. But the team between the master and the
11 bridge and the pilot is absolutely critical. And
12 safety has got to be the number one priority.

13 Q. Would you acknowledge that the years 2020, 2021, and
14 2022 were very severe loss years for the
15 International Group of P&I Clubs, the 13 clubs who
16 insure 90 percent of the world's tonnage?

17 A. Sir, I don't have data on that. Again, I'm not in
18 the insurance universe. And I don't have any
19 information on what the P&I clubs' profits and losses
20 were during that period. It's not something I
21 normally track.

22 MR. HAGLUND: Well, I really appreciate your
23 time, Ms. Metcalf, and those are all my questions.

24 THE WITNESS: Thank you, sir. It's a
25 pleasure to meet you.

1 JUDGE HOWARD: Any redirect?

2 MS. DeLAPPE: Yes. Thank you.

3 REDIRECT EXAMINATION

4 BY MS. DeLAPPE:

5 Q. Ms. Metcalf, I have a couple questions for you.

6 Counsel for PSP asked you about an article,
7 Exhibit CPC-17, that you kindly found for us. You
8 said that you disagree with some of the conclusions
9 in that article about the ability to evade safety and
10 environment responsibilities.

11 Could you explain your disagreement?

12 A. Yes, ma'am. In my review of all the documents that
13 have been submitted, including principal testimonies,
14 I was surprised at the lack of information about flag
15 state and port state control programs and the current
16 status of those programs. Twenty years ago, with
17 some of the less robust, as they would call, flags of
18 convenience, now called open registries, there was a
19 possibility that that could happen. But with the
20 more robust flag state control programs, more robust
21 port state control programs -- and I'm talking about
22 all over the world, not just in the United States --
23 and the implementation of the mandatory IMO model
24 audit program, it becomes very, very difficult to
25 evade. Because if your flag state is not enforcing,

1 which it should be, some of the ports -- the port
2 states are going to -- are going to get you, as well
3 they should.

4 The -- the key here is that -- the quote -- I
5 always have to get my dad, God rest his soul, in. To
6 quote my dad, we have ten basic commandments and
7 millions of law for people that would seek to disobey
8 the ten basic ones. And unfortunately, that's what
9 any industry in the world is like.

10 But I disagree with that, because when I look at
11 the number of articles that were written and studies
12 that were written, what I'm missing in those is the
13 people part of it. It's very easy to -- not very
14 easy. There's very smart people that do this and do
15 it quite well -- but to examine just a bunch of
16 numbers and not actually talk to the people in the
17 work environment, you don't get a real comprehension.
18 I mean -- and I understand why it's not in some of
19 these documents. But go out and talk with someone on
20 a ship.

21 Are there people that have problems? Yes. As I
22 mentioned to PSP's counsel, there are outliers high
23 and low. And there are a lot of folks in the
24 average. But the general sentiment of those of us
25 that worked at sea and that now try and help people

1 at sea stay compliant and safe and not
2 environmentally destructive, is we are totally
3 committed, absolutely committed, to making sure these
4 laws are enforced, and in cases for vessels that
5 don't meet those requirements, appropriate action
6 taken. Because when one fails, we all fail. Good
7 news never makes the front page. So it's in all of
8 our best interest to continue to improve and minimize
9 the number of those cases that make the front page.

10 Q. And right now, were you referring to any articles or
11 documents specifically in the record about -- when
12 you're talking about articles that are out of touch
13 with the reality that people in the industry are
14 actually dealing with on the ground, so to speak?

15 A. Well, I -- I didn't review -- I mean, this morning I
16 got -- PSP's counsel was kind enough to provide a
17 list this morning of all the exhibits that I might be
18 called to -- to reflect on. I didn't get a chance to
19 go through them, but I noticed in a number of cases,
20 there were a lot of journal -- or articles for
21 various publications. I believe Mr. Costanzo, as one
22 of his exhibits was -- was an article -- I think I've
23 got it right here. Hakai Magazine. But to get a
24 full picture of what's really going on anywhere, you
25 can't just sit in your office and use statistics.

1 Statistics tell you what was. Statistics will never
2 tell you what is and what can be.

3 Q. And so there you're referring to Exhibit CPC-18?

4 A. Yeah. That's the Hakai -- that is one example. Yes.

5 Q. Okay.

6 A. Yes, sir -- yes, ma'am.

7 Q. Thank you. You were also asked about your testimony
8 on page 7 of Exhibit KJM-1T. If you could turn to
9 that page, please.

10 A. I've got it right here. Right here.

11 Q. Without any conjurers?

12 A. No conjurers.

13 Q. At the bottom of that page, you see at line 23 you
14 wrote, "Vessels" -- you testified, "Vessels are
15 required by law to carry insurance in accordance with
16 international and national laws and, but for a few
17 exceptional cases, have covered the expenses
18 associated with a marine casualty. For example, they
19 do not shelter or reduce their legal responsibilities
20 by placing the burden on the public, as alleged in
21 Mr. Costanzo's testimony."

22 In your cross-examination just now, you said that
23 you had learned some more things from Sean McCarthy's
24 testimony. Is there anything that you learned that
25 has changed your view of your testimony there?

1 A. No, ma'am, there's not.

2 Q. You continue to stand by that testimony?

3 A. I do.

4 Q. And would you like to add anything else to it, in
5 light of your cross-examination?

6 A. No. I just -- I just thank you for being gentle with
7 an old mariner and even less experienced lawyer. And
8 I hope I've tried to answer your questions fully,
9 fairly, and to the benefit of the Commissioners.
10 Thank you.

11 MS. DeLAPPE: Thank you, Ms. Metcalf. I
12 have no further questions.

13 JUDGE HOWARD: All right. Do we have any
14 questions from the bench for this witness?

15 COMMISSIONER DOUMIT: None here, Your Honor.

16 COMMISSIONER RENDAHL: None, Your Honor.

17 But thank you for your testimony.

18 CHAIR DANNER: Only wanting to know if
19 "turning turtle" is a phrase that is used wildly in
20 the industry as I've never heard it before.

21 THE WITNESS: Mr. Commissioner, it's -- it's
22 one of those things you see on the beach every day,
23 of course. And unfortunately, it's not just the
24 turtles that can turn turtle. So you have to do
25 better work so that it doesn't happen in our

1 particular industry.

2 CHAIR DANNER: Thank you.

3 THE WITNESS: Turn me over if you see me on
4 the beach upsidedown. Thank you, sir.

5 CHAIR DANNER: All right. Thank you.

6 JUDGE HOWARD: Thank you for your testimony,
7 Ms. Metcalf. And you are excused from the remainder
8 of the hearing.

9 All right. Our next witness is PMSA's
10 Captain Moore.

11 MR. BLOCK: Before we commence, Your
12 Honor -- Steve Block here for TOTE. I was wondering
13 whether I might ask Mr. Haglund whether he intends to
14 cross-examine Mr. Moore, Captain Moore, about topics
15 he put in his testimony regarding the TOTE issues.

16 JUDGE HOWARD: Mr. Haglund, would you like
17 to respond?

18 MR. HAGLUND: Sure. Given the time
19 constraints, my plan was not to. So I don't -- so
20 Steve, I don't think I will -- I'll commit to you I'm
21 not going to ask him questions about the TOTE issue.

22 MR. BLOCK: Okay. Thank you so much,
23 Mr. Haglund. I appreciate that. Okay.

24 JUDGE HOWARD: All right. Captain Moore,
25 you can see and hear me all right, I imagine. Do you

1 need to unmute?

2 THE WITNESS: Yes, I can see you.

3 JUDGE HOWARD: Great. I wanted to make sure
4 I could hear your affirmation after I swear you in.
5 If you could please raise your right hand and I'll
6 swear you in.

7 * * * * *

8 Captain Michael Moore, having been first duly
9 sworn, was examined and
testified as follows:

10 THE WITNESS: I do.

11 JUDGE HOWARD: All right. Great. Thank
12 you.

13 Ms. DeLappe, could you please introduce the
14 witness.

15 MS. DeLAPPE: Mr. Moore, could you please
16 state your full name.

17 THE WITNESS: Michael Moore.

18 MS. DeLAPPE: And what is your position and
19 employment?

20 THE WITNESS: I'm a vice president at
21 Pacific Merchant Shipping Association.

22 MS. DeLAPPE: And you know that your
23 pre-filed testimony and exhibits have already been
24 accepted into evidence.

25 Are you now adopting those under oath?

1 THE WITNESS: I am.

2 MS. DeLAPPE: I tender the witness.

3 JUDGE HOWARD: All right. Thank you. PSP,
4 you may proceed.

5 MR. HAGLUND: Thank you.

6 CROSS-EXAMINATION

7 BY MR. HAGLUND:

8 Q. Captain Moore, is it correct that PMSA has hired no
9 shipping economist in connection with this rate case?

10 A. That is correct.

11 Q. And you're not an economist, are you?

12 A. No, I'm not an economist.

13 Q. And it's true, is it not, that PMSA has hired no
14 compensation expert in this case?

15 A. We have not hired a compensation expert.

16 Q. And it's also true you've hired no fatigue risk or
17 sleep medicine expert; correct?

18 A. We have not.

19 Q. Okay. Now, in your -- I want to start with questions
20 about DNI and pilot group comparability.

21 So is it fair to say that in your testimony you
22 take the position that use of comparable pilot group
23 income, as assembled by Mr. Lough for -- from other
24 pilotage grounds, is -- in your opinion, it's not an
25 appropriate metric for determining the DNI for the

1 Puget Sound Pilots; is that right?

2 A. That is correct.

3 Q. And if we could go to a page from your testimony,
4 MM-I -- 1T at page 190?

5 A. Okay.

6 Q. And in -- on this page of your testimony, you note
7 that Mr. Lough's testimony does not address a number
8 of factors that -- I want to ask you about them.

9 But is it fair to say that this testimony is
10 stating that one must have the data responsive to
11 each of these five factors we'll talk about in a
12 minute in order to have the body of information
13 necessary to compare one pilot group to the next for
14 purposes of determining net income?

15 A. My testimony is not limited to those five factors.
16 There are five bullets there. My testimony is about
17 the fact that there are a number of relevant factors
18 when comparing pilot grounds, whether you're going to
19 talk about safety or training, or in this case,
20 compensation of the pilots.

21 So my only correction there would be that it's
22 not just five factors. There are a number of factors
23 that could be very relevant when you're trying to do
24 comparability.

25 Q. Okay. And let's -- you've identified five here,

1 correct, five bullet items?

2 A. Yes.

3 Q. Okay. So first, you list consideration of day-to-day
4 work by pilotage district and area.

5 And by that, Captain, do you mean that one must
6 have detailed data regarding the three components of
7 pilot work, including prep time, travel time, and
8 assignment time?

9 A. I believe there are many more factors involved in
10 comparing work besides those three factors.

11 Q. Okay. What are those?

12 A. The complexity of the grounds. The -- the piloting
13 challenges as -- as one could take a look at various
14 training programs around -- around the country in
15 different pilot groups, they are tailored to the
16 pilot ground. For example, Long Beach has up to
17 3,000 training assignments to be fully qualified.
18 And here it takes about 20 years to do that. That
19 doesn't mean the training program here isn't
20 absolutely suited for our pilotage district. I
21 believe it is. They're just different.

22 So when you take a look at the kind of work
23 they're doing, I think you've got to take those kind
24 of things into account. 30 assignments a month in
25 Long Beach this last February. It was under nine

1 assignments here. Longer assignments here, five
2 hours. Shorter assignments there, two hours. Those
3 are all different factors that you have to consider
4 when you're comparing work of one pilot ground to
5 another.

6 Q. And the second bullet you have here is a financial
7 audit for each district, such that UTC Staff can
8 verify the comparability of the proffered districts.

9 Now isn't it true, Captain Moore, that the bulk
10 of the pilotage grounds in the United States --
11 there's some 50 of them -- or 50 pilot groups in the
12 United States -- but that a majority, a sizable
13 majority of those groups do not make their -- they're
14 not required to file any sort of public audit or
15 otherwise make their financial performance known to
16 third parties.

17 You know that, don't you?

18 A. Well, it -- my experience, we've -- we've identified
19 over 60 pilot groups, and we agree with the comment
20 that most of the time their financials are
21 self-described as opaque and not available, unless
22 they go through a public hearing of some kind at
23 different frequencies, in which case certain
24 documents might be filed.

25 Q. And the -- the State of Washington, specifically the

1 UTC, has no authority to require pilot groups in
2 other states to produce their financial information,
3 does it?

4 A. I would not think so. To the extent that the UTC
5 Staff, for example, make an analysis, would like to
6 access such information, they could reach out and
7 attempt to do so. But I don't believe there would be
8 any authority or jurisdiction to compel it.

9 Q. Okay. That's right. And you -- the third bullet is
10 an audit of pilotage district conditions, features,
11 or variables that would assist in the determination
12 of whether average pilot income is comparable.

13 And you would contend that that should be done
14 for all districts in the United States?

15 A. Well, I believe if you're comparing compensation on
16 pilot grounds, one would have to know the differences
17 in the challenges, the risks, the training program.
18 If a training program takes three years, another
19 training program takes, say, eight months, perhaps --
20 for example, the Columbia River Bar is a much shorter
21 training program. They have a much more focused area
22 that they have to provide their services in. That is
23 an important consideration when you're taking a look
24 at what skill sets are you expected to master before
25 you're able to pilot. So that gets into the skill

1 set being the service being offered and the
2 compensation, a fair and reasonable compensation
3 associated with that skill set.

4 Q. So let's go to the next bullet, the fourth. This one
5 is consideration of differences in the types of
6 piloting in each district, including bar pilotage,
7 river pilotage, harbor pilotage, and the New Orleans
8 Delta pilots.

9 Is it your position that a bar pilotage ground
10 cannot be comparable in terms of the nature of the
11 pilots' job to a river pilotage ground?

12 A. Well, I think there are differences there that ought
13 to be understood. If -- if one attempts to normalize
14 the pilot skills necessary to provide pilotage
15 service in each ground, you would have to take a look
16 at those various factors. In the case of bar
17 pilotage, perhaps it's the boarding area is
18 significantly different. And the transit and reading
19 the conditions, the waterway conditions would be
20 different than, say, a river pilot going up river and
21 having to know where the sand bar has been shifted.
22 So there are different elements to that.

23 And I think the beauty of the pilotage system is
24 that it's focused on local knowledge and really
25 understanding that in your pilotage district; knowing

1 that like the back of your hand. I think those kind
2 of skills and the training programs are different for
3 a reason, and they should be.

4 Q. So let's go to the fifth bullet.

5 A. Okay.

6 Q. This one is, "Consideration of information from
7 pilotage districts excluded from the list of
8 comparable districts provided by PSP in its filing."

9 Now, you are well aware that there is a -- that
10 the number of State-licensed pilot regulators in the
11 U.S. that require regular filings of audits or
12 financial disclosures showing what pilots are making
13 in a given year is a very small percentage of the 50
14 to 60 pilotage grounds that exist in the United
15 States.

16 You're aware of that; correct?

17 A. I have not looked -- 65 pilot grounds we had
18 identified years and years ago. Since that time, I
19 have not done a side-by-side comparison of all of
20 those pilotage grounds. But the information was
21 inconsistent and offered at different frequencies, if
22 you will. And, of course, I'm also considering
23 non-state pilot grounds like Los Angeles, Long Beach,
24 Port Hueneme, San Diego in that mix, as well.

25 Q. Now the -- if the -- you're aware that there are 24

1 coastal states with pilot boards or pilot regulators
2 of one type or another; correct?

3 A. I certainly read that. I have not done an inventory
4 myself. I have no reason to not believe it's not 24.
5 It's been documented in several things I've read.

6 Q. And then the Great Lakes, which is seven other
7 states, is -- pilotage there is under the
8 jurisdiction of the U.S. Coast Guard, with a fairly
9 high level Coast Guard officer serving as the
10 director of Great Lakes pilotage; correct?

11 A. I'm aware of that, and there are three pilotage
12 districts there and that officer serves the same role
13 for all three of those Great Lakes pilotage
14 districts.

15 Q. Right. Now, isn't it fair to say, Captain Moore,
16 that there is no U.S. state regulator of pilot groups
17 in the United States? We're talking 24 states,
18 there's not a single one of those states of that has
19 ever had access to all of the information that you
20 list here as necessary to do a comparison of pilot
21 group incomes?

22 A. I don't really know what they've had access to over
23 time. And I don't really know -- for example,
24 let's -- if we assume that each of those states have
25 a singular pilotage board, which I'm not really sure

1 that that is absolutely true, but if they did, to
2 what extent they have inventoried other state pilot
3 grounds or to what extent they have considered
4 non-state pilot grounds. And, again, to wit, LA,
5 Long Beach, San Diego, Port Hueneme, Great Lakes are
6 examples of that.

7 Q. But did you review all of the exhibits to David
8 Lough's testimony that included a total of --
9 including the three Great Lakes groups listed as a
10 single item on the table, included 15 pilot groups,
11 including Puget Sound Pilots?

12 A. I can't recall how many groups, but I -- did I look
13 at his testimony and look at his exhibits? I did. I
14 don't recall how many groups exactly he had listed.

15 Q. Okay. But did you see, in any of the multiple rate
16 orders that were a part of the collection of exhibits
17 supporting his net income table, the kind of
18 comprehensive data that you're suggesting is
19 absolutely necessary in order for a pilot group
20 regulator, like the UTC, to be able to reach a
21 conclusion on what's comparable income for Puget
22 Sound compared elsewhere?

23 A. My assessment, in looking at that data, was that
24 there were several areas that were not normalized.
25 Los Angeles pilots, A, are not a state pilotage

1 group; B, they are required to contribute 7 percent
2 of their income to retirement and four percent to
3 medical, which was not articulated in his summary.
4 And so I can give you many examples where, if you're
5 going to normalize and compare, you have to do apples
6 to apples. What's happening with benefits, what's
7 happening with contributions, drawing retirement.
8 And like we talked about before, what is your
9 workload like and what is the risk in the services
10 you're offering. All of those things have to be
11 considered.

12 But I think you're talking over here about mostly
13 the financial information on those reports. Again, I
14 have concerns that there are not apples-to-apples
15 comparisons, even in his exhibits. You know,
16 different years, 2019 compared to 2020. LA federal
17 pilot has to contribute to its own benefits, not
18 articulated. Those are the kind of things, red
19 flags, that would be thrown up by me. If I was
20 trying to do a comparison, those things would have to
21 be reconciled in order to normalize the data for
22 comparison purposes.

23 Q. Captain Moore, given the nature of the state pilotage
24 system, which, except for the Great Lakes, is 24
25 individual states, the very nature of that system

1 with 24 different regulators -- and in Texas, it's
2 the counties that govern pilotage by wherever the
3 port is, whatever county that port is in has
4 jurisdiction over the rate setting for that -- for
5 Houston, for example. It's not a unified statewide
6 board of pilotage, it's actually the county.

7 So given the decentralized state-by-state
8 character of the state pilotage system in the United
9 States, there is no pilotage rate order in the last
10 20 years that has assembled the kind of data you
11 contend is necessary for the UTC to do its job.

12 Are you able to identify any rate order that's
13 done what you suggest is necessary to reach a fair,
14 just, and reasonable conclusion?

15 A. I can say that I have no knowledge of all of their
16 efforts. I also would note that -- you talked about
17 California being a coastal state. Again, the only
18 state pilotage there is in the San Francisco Bay
19 Area. I do understand that Texas has numerous
20 pilotage boards. I know Long Beach sets their pilot
21 rates through the Long Beach Port Commission. LA
22 does it through the mayor's office in a contract
23 negotiation.

24 So there are different ways that compensation is
25 determined.

1 I do not know the efforts on each -- each of
2 those states about -- around trying to get comparable
3 financial data for the purposes of setting rates in
4 their state.

5 I have read where some states say it's not really
6 important that we know what compensation is in other
7 states. What's important is we have a fair and
8 reasonable rate for our state and our pilotage
9 grounds that provides the service, attracts, retains,
10 and funds the necessary expenses to provide that
11 service. But I'm not aware of how much effort has
12 been involved in that.

13 Q. Now, in your rebuttal testimony, you characterize
14 PSP's comparable pilot income information as, quote,
15 "Nebulous cherry-picked comparable ports analysis,"
16 closed quote.

17 Do you stand by that testimony?

18 A. I do.

19 Q. Okay. However, you had eight months to look at all
20 the exhibits that support David Lough's analysis in
21 his table. It was represented in PSP's filing
22 that -- that what was attached to Mr. Lough's
23 testimony was 100 percent of the public rate orders
24 from a state pilotage Commission or board, plus the
25 publicly available audits or financial disclosures

1 required of pilot groups throughout the United
2 States. And there was one found in rebuttal, and
3 there was an update from the Coast Guard that was
4 added. PMSA, in its response testimony, identified
5 no other order or audit that contained information
6 that pilots were earning less elsewhere.

7 Did you?

8 That's correct, is it not?

9 A. I did not spend time looking at all those pilotage
10 districts to see what was available or not. I did
11 not do that. I do note that you have a list here --
12 Mr. Lough has a list here of different years, 2019,
13 2017, 2021, 2020, and did not reconcile all those
14 factors I just mentioned in terms of benefits,
15 retirement, medical, and so forth.

16 I didn't see any reason for me or PMSA to go
17 looking at -- and, again, I've identified 65 pilotage
18 districts, maybe some of those you didn't really look
19 at because they're not state pilotage districts. And
20 did not look at all those to see who has published
21 what information when.

22 I do know, in the past, in trying to compare,
23 there are a number of factors that have not been
24 reconciled and normalized for adequate comparison. I
25 still believe that today.

1 Q. Now, you basically contend that it's not possible to
2 compare PSP to other pilotage grounds without all of
3 the five categories of information, plus more that
4 apparently -- I'm not going to go further on this.
5 But you want at least the five bulleted items we've
6 talked about here in the last several minutes;
7 correct?

8 A. Can you point me to where I said it was impossible?
9 Do you have that? I think I know where you might be
10 talking about.

11 Q. Well, I -- let me just -- I don't want to take the
12 time to go find that.

13 Let me just represent to you that you
14 characterized it as not being possible to compare
15 without all of this other information. Exactly --

16 A. I think --

17 Q. -- it was at page -- if we could go to MM, at 90, I
18 think it's at page 90.

19 A. Thank you. I'll be right there. Just give me a
20 second. Page 90.

21 Q. No. That's -- that's an incorrect citation.

22 A. I think you might be referring to pictures. And I
23 was saying it was not possible to compare pilot
24 grounds based exclusively on comparing pictures.

25 Q. Pictures. Well, I'm not -- I don't want to get

1 derailed on a little point like this.

2 I want to move to this point.

3 A. Okay.

4 Q. You -- you've made it clear you think a lot more
5 information is necessary to properly compare Puget
6 Sound on a comparable basis to other groups.

7 Is that a fair statement?

8 A. I'm sorry. Could you say that one more time?

9 Q. You've -- you've said today that a lot more
10 information is needed and a lot more information must
11 be reconciled in order to properly compare Puget
12 Sound to other pilotage grounds in terms of net
13 income; correct?

14 A. In terms of a lot of factor, including -- including
15 that factor. By the way, this picture on page 197
16 and 196 is where I was referring to there are many
17 factors and using pictures might help, but you
18 can't -- you can't compare grounds exclusively based
19 on pictures. So that's on page 196.

20 Q. I understand. I don't think that's a viable means of
21 comparison.

22 So let me ask this.

23 Despite what you've said this afternoon and
24 relate in your testimony, and in multiple places,
25 about all this information that's necessary to look

1 at comparable pilot income, isn't it true,
2 Captain Moore, that the PMSA-supported legislation in
3 2022, just last year, in California, that was signed
4 into law September 30 of 2022 that requires the
5 California Board of Pilot Commissioners to consider,
6 at minimum, I'm quoting, "evidence of compensation
7 and benefits in other state-regulated pilotage
8 associations." And I'll put up that statute so we
9 can look at the language in this recently-enacted
10 law.

11 But first you -- PMSA supported this legislation;
12 correct?

13 A. It's my understanding. I was not directly involved
14 in that. It's my understanding that there were a lot
15 of factors, a lot of issues in the negotiations of
16 that legislation, as we all know how legislation
17 proceeds and bill language and back and forth and
18 negotiations and compromises involved in that. But I
19 was not party to it. So I cannot articulate all of
20 the issues and compromises that were involved in
21 those discussions.

22 But I would say it sounds very similar to what
23 we've done with the Puget Sound Pilots in past years
24 since I've been here.

25 Q. Well, let's put this language up on the screen. It's

1 MM-88X, page 10. And if you could highlight and blow
2 up the first -- the Subsection B through 2. Yeah.
3 Yes. Right there.

4 So this -- let me represent to you as part of the
5 California statute that PMSA, San Francisco Bar
6 Pilots, and the Board of Pilot Commissioners in
7 California all jointly supported before the
8 California legislature. It was passed and signed
9 into law last September. And it makes clear that, in
10 determining target net income per pilot, this is a
11 section governing how the board is supposed to
12 address pilot income, all of the following factors
13 shall be considered.

14 Number one is the professional skills,
15 experience, difficulty, risk, lifestyle, commitment,
16 et cetera.

17 And then number two says, "Evidence of
18 compensation for comparable maritime professions,
19 including individuals and other state-regulated
20 pilotage associations, at a minimum considering
21 evidence of compensation and benefits."

22 And if we scroll down, nowhere in this statute is
23 there a requirement that the Board of Pilot
24 Commissioners and the administrative law judge
25 hearing model that they have for -- set out in this

1 new statute, do they have the kind of requirement to
2 get all the information that you have listed in those
3 five bullets we talked about earlier.

4 So my question for you is this. Do you have any
5 familiarity with the California statute your
6 organization supported?

7 A. Not directly. Am I aware that the --

8 Q. Okay.

9 A. Am I aware that there was some discussions, yes. But
10 I'm not aware of the details, no.

11 Q. Okay. So the testimony of Captain McIntyre in this
12 record, a current -- former Columbia River --
13 Columbia River Pilot and now the business manager of
14 the San Francisco Bar Pilots who has testimony in
15 this record in which she represented that it was a
16 joint effort of PMSA, San Francisco Bar Pilots, and
17 the Board of Pilot Commissioners to get this statute
18 passed last year, you have no reason to dispute that
19 representation, do you?

20 MS. DeLAPPE: Objection. Assuming facts not
21 in evidence.

22 JUDGE HOWARD: Could you clarify,
23 Ms. DeLappe? I believe Mr. Haglund did refer to
24 testimony from that particular witness.

25 MS. DeLAPPE: He has not referred to

1 testimony in this case, has he? I haven't actually
2 heard him refer to an exhibit.

3 JUDGE HOWARD: The testimony of the business
4 manager of the -- I believe it was the San Francisco
5 pilots.

6 MR. HAGLUND: Yes. Anne McIntyre made that
7 representation in her testimony.

8 MS. DeLAPPE: Thank you. It's a little hard
9 to follow when counsel isn't referring to specific
10 exhibits and pages. I withdraw my objection.

11 JUDGE HOWARD: Thank you.

12 THE WITNESS: I am aware of the briefings to
13 our board of directors and membership that Staff --
14 PMSA Staff in the Bay Area engaged in conversations
15 with the San Francisco Pilots. I -- and I believe
16 with the Board of Pilot Commission at some level,
17 either directly or through Staff, as they went
18 through these negotiations. And I'm -- I just don't
19 know the details and what they discussed and what
20 they didn't.

21 And I don't know how this is going to -- this
22 is 2022, you say. So I don't know how this is going
23 to be necessarily implemented. It talks about
24 comparable maritime professions, and it talks about
25 skill sets and so forth -- skills and experience

1 required. So it will be interesting to see how it is
2 actually implemented. I have seen attempts in other
3 places attempting to compare that didn't really
4 result in any meaningful nexus to the decision of the
5 tariff or the compensation. So I guess we'll have to
6 see how this proceeds.

7 BY MR. HAGLUND:

8 Q. But as the statute sits here, you see that the board
9 is required to, at a minimum, consider evidence of
10 compensation and benefits of other state-regulated
11 pilotage associations.

12 Do you see that?

13 A. I do see that. I do see that.

14 Q. Okay. Thank you.

15 Now, is it true that one of your PMSA members is
16 Blue Water, the steamship agency?

17 A. That's an interesting question because I do not
18 follow -- and I'm not -- personally have a role in
19 checking all of our membership -- membership. They
20 were a member -- as an agency, they were a member
21 years and years and years ago. I have not checked
22 the list. I have no reason to believe they would not
23 be. Some agents are, some agents aren't. And it
24 kind of goes back and forth with a number of factors.
25 But I don't know that they're no longer a member.

1 Q. So they could well be a member, is what you're
2 saying?

3 A. Yes, they could well be a member, yes.

4 Q. And, in fact, don't you know one of their top
5 executives, a man named John Coyle?

6 A. I have spoken with John Coyle, I don't know, four or
7 five times in his 20 -- 2008. I think I first maybe
8 talked to him in 2008 or '9, and maybe three or four
9 times since then.

10 Q. And if Blue Water actually shows up on your website
11 as a member, that wouldn't surprise you?

12 A. No.

13 Q. Okay. So were you aware that in 2020/2021, that
14 Mr. Coyle, who has been the president of the Board of
15 the Columbia River Steamship Operators Association,
16 which is the trade association representing the
17 shipping industry on the Columbia River, that he,
18 with the assistance of executive director
19 Kate Mickelson, was successful in negotiating pilot
20 rate settlements with all three pilot groups in
21 Oregon that ultimately have the Columbia River Bar
22 Pilots and the Columbia River Pilots projected to
23 earn over \$500,000 in 2023?

24 Were you aware of the settlements worked out
25 between the CRSOA and those three pilot groups in the

1 second half of 2020 and first half of 2021?

2 A. I'm not aware of the --

3 MR. CALLAGHAN: Your Honor, at this point,
4 I'm going to have to object as to relevance. We're
5 here to determine the proper rates for PSP and
6 whether their proposal is fair, just, reasonable, and
7 sufficient. I'm not seeing how this question gets at
8 information that makes that more or less probable.

9 JUDGE HOWARD: I will allow the question. I
10 would not want to go much further into this
11 particular topic, perhaps. But I will allow the
12 question.

13 THE WITNESS: No. I was not involved in any
14 conversations about that. I'm aware that Mr. Coyle's
15 agency gets involved with range ships in the Columbia
16 River. I know that Kate Mickelson is the executive
17 director of the Columbia River Steamship Operator
18 Association. Neither one of them spoke to me about
19 this, checked in with me, asked me what I thought.
20 And I'm not aware about this projection over 500,000
21 and whether it includes pilots paying for their own
22 retirement, pilots paying for their own medical. I
23 have no idea how to compare that projection and who
24 made that projection, and how that would be
25 comparable in any way to Puget Sound or San Francisco

1 that made 370,000, or even LA, Long Beach.

2 BY MR. HAGLUND:

3 Q. So you haven't read the rebuttal testimony of Captain
4 Dan Jordan or Captain Jeremy Neilson filed on
5 March 3rd in this case?

6 A. I recall their names. I don't recall the details of
7 what they spoke about. I haven't tracked Columbia
8 River very much since 2010, when they had the
9 original order that presumably still carries some
10 weight. But I'm not aware of that.

11 Q. Would you agree, Captain Moore, that throughout
12 the -- let's say over the last ten years, that there
13 have been multiple pilotage grounds throughout the
14 United States where settlements are reached between
15 the industry and the pilot group, and they jointly
16 propose an increase in rates to fund a level of pilot
17 net income that has been agreed upon by the typical
18 combatants in a pilot rate case?

19 A. I'm definitely aware when I first got involved here,
20 it was when the self-correcting formula was still in
21 place, and rates went up and rates went down. There
22 was a targeted net income. And the industry agreed
23 to pursue that. So I'm aware of more here than I am
24 other places. But I have detailed knowledge of what
25 that was all about. I don't have detailed knowledge

1 of the other grounds.

2 Q. Okay. Would you agree as a matter of common sense
3 principle that a pilot group regulator presented by a
4 proposed settlement can treat that as a factor in
5 evaluating -- in fulfilling their duty to determine
6 that the proposed -- jointly proposed new rates are,
7 in fact, fair, just, and reasonable?

8 Would you agree with the principle that the
9 existence of the settlement is evidence that supports
10 a finding of fair, just, and reasonable rates?

11 A. Let me make sure I understand your question properly.

12 So if industry and pilots met separately, apart
13 from the regulator, and landed on an agreement to
14 proceed, or an agreement to make a recommendation to
15 the regulatory body, would that be an indication of
16 fair, just, and reasonable? Is that -- is that the
17 question?

18 Q. Yes. There are multiple pilot state -- pilot group
19 regulators that have so stated that the fact this is
20 a settlement proposal, with the back and forth that
21 goes into negotiations between parties that have
22 adverse interests, is a factor to be given some
23 serious consideration in the evaluative process of
24 determining whether those rates are fair, just, and
25 reasonable.

1 Do you agree that's a -- a reasonable approach in
2 that setting?

3 A. I would agree a regulatory agency would welcome an
4 agreement from the parties to come in. How they
5 would view that under their lens of responsibility to
6 determine fair, just, and reasonable, I don't know.
7 But I would think that they would see that pretty
8 favorably if the industry and pilots could do that.

9 And we've done that a couple times here since
10 I've been here. We've had joint presentations, and
11 the Board of Pilotage Commission, which was not the
12 UTC at the time, was very much receptive of that.
13 They didn't have to be, but they were. So I can only
14 assume that they saw it as fair.

15 Q. Okay. So would you agree that diversification of the
16 Puget Sound Pilots workforce is an important policy
17 objective of both the BPC and the UTC?

18 A. I'm really happy you asked this question. Because I
19 think there's a lot of commingling of the definition
20 of the word "diversity." And I think diversity of
21 experience, i.e. tug master, Washington State ferry
22 master, deep draft vessel master, military, and so
23 forth, is important to throw into the mix. And they
24 all have to come with their own expertise into the
25 lens of the training program here to fine tune what

1 they bring to the table, to make sure that they can
2 provide that service.

3 The other part of the diversity is I think you're
4 getting into the DEI realm of things, which is a
5 whole other aspect that maritime is struggling with
6 in terms of getting folks in at the bottom of the
7 pyramid, in high schools and maritime institutions
8 and so forth, into training programs so that a more
9 diverse population has access to, is aware of, and
10 has a chance to succeed in going up that pipeline or
11 up the pyramid.

12 I would say those are two different things. One
13 is experience in how you move ships and the other one
14 is more of the DEI diversity. And I'm not sure which
15 one you were referring to.

16 Q. Well, let me ask a different -- slightly different
17 question.

18 Is it PMSA's position in this case that pilot
19 compensation is not a significant factor in a pilot
20 group's efforts to diversify itself? That sure seems
21 to be the suggestion of your expert, Ms. Nalty?

22 A. I think, in general, our position has been very clear
23 over the years, that there needs to be enough
24 attractiveness, workload and compensation, and the
25 area in which you want to live and perform your

1 profession, in this case pilotage, to attract highly
2 qualified candidates to apply to take an exam -- to
3 take an exam, if one passes, to take a similar test,
4 if one passes, to successfully complete a training
5 program that's very comprehensive and which requires
6 giving up benefits and maybe taking a pay cut during
7 the whole training program. So that whole package is
8 involved in I think being a -- in the attraction
9 part.

10 So part of it is income, for sure. And part of
11 it's workload, part of it's how much time you have
12 off. All of those things come in. Where I want to
13 live. I think all of those come into play. And
14 we've never had an opening where we didn't have a
15 highly qualified candidate either on a list or in
16 training or in -- and unfortunately, in some cases,
17 suing to try to get on the list. So I think it's
18 pretty evident that it's a very attractive
19 profession.

20 Q. My question was whether compensation is an
21 insignificant factor.

22 Is that PMSA's position?

23 A. It is not -- it's part of those many factors. It's
24 not --

25 Q. Okay.

1 A. It's not a standalone factor. I think it's part of
2 the whole picture for sure.

3 Q. Okay. Now, it's absolutely true in this case that --
4 reading your testimony, that PMSA is proposing to the
5 UTC that the DNI approved for the second year of the
6 tariff in the -- in Order 09, that that rounding it
7 to -- skipping the hundreds of dollars but -- which
8 is currently \$410,000, which PSP has not come close
9 to earning in the last two years. But your proposal
10 as an organization is that there be a 15 percent
11 reduction in that DNI of \$410,000 to \$346,000;
12 correct?

13 A. That's not correct. And I can explain.

14 The --

15 Q. Okay.

16 A. -- actual distributed net income was 295,000, not
17 410,000. The actual distributed net income is based
18 upon workload, management of expenses, and number of
19 pilots. And so it turns out that the actual net
20 income was 295. And what we're proposing is applying
21 the formula agreed to -- or implemented by the
22 Commission based on UTC Staff, and it is higher
23 than -- it's 346, 357, and 368. And that's much
24 higher than the 295.

25 Q. You would agree, wouldn't you, that the Commission,

1 when it adopted a 410,000 DNI for the second year of
2 the tariff, was anticipating that the revenue
3 requirement was going to be generated by the tariff
4 and that the pilots would make that \$410,000.

5 You'd agree with that, wouldn't you?

6 A. No, I would not. I would not agree that's the
7 position. I think the position is -- my
8 understanding in reading UTC Staff language and UTC,
9 that the rates provide the opportunity to earn that
10 revenue, it was over 36 million in year two, and that
11 distributed net income. But there's no guarantee.
12 It depends on workload, number of pilots, and
13 management of expenses. And so there was no
14 guarantee of that. That was a target, if you will,
15 based on the test year that Puget Sound Pilots
16 actually submitted in the first rate case.

17 Q. Captain Moore, if the UTC follows your -- adopts your
18 proposal and decides that the DNI it established of
19 \$410,000 in the second tariff year, which is
20 continuing to apply until such time as they change it
21 in the next order, is reduced by 15 percent to
22 \$346,000, do you seriously contend that that decision
23 would have no negative impact on PSP pilot corps
24 morale?

25 A. I don't have a really good way to evaluate that.

1 I've seen -- I've seen the income levels go up and
2 down since I've been here. And during the tariff --
3 during the COVID year, which is an anomaly, down more
4 to 204,000, then the 295, then to whatever it's going
5 to be in 2022. And the way this formula is set up,
6 there are incentives for efficiency and average
7 assignment level, management of expenses to increase
8 that. And if the PSP does those things, that that
9 formula will increase the total distributed net
10 income which, therefore, would increase the
11 distributed net income per pilot.

12 So I think the incentives are in the right place.
13 We're just applying the formula here that UTC Staff
14 developed and the Commission used in the Order 09.

15 Q. Okay. Let's turn to another --

16 A. I'm not applying inflation. There's an inflation
17 component in there.

18 Q. Let's turn to a slightly different topic. Are you
19 familiar with the Coast Guard's National Motor
20 Lifeboat School at Cape Disappointment, Washington?

21 A. I am familiar with it.

22 Q. And if we pull up MM-102X, did you happen to see the
23 New York Times article about that training school
24 very recently?

25 A. Just -- give me a second to call it up here.

1 Yes. I -- I read that. I've seen that picture.
2 And I -- I have been down there. I have had
3 assignments in that area when I was a lieutenant. So
4 I'm pretty familiar with it.

5 Q. And are you -- do you agree with the policy rationale
6 of the Coast Guard to cite this training school in a
7 location that experiences some of the most extreme
8 weather and wave action in the United States?

9 A. Yes. I would agree with that. Although I would say
10 Unimak Pass up in Alaska gets short shrifted here.
11 And there are very significant ocean conditions
12 there, as well.

13 Q. Now I want to give you a hypothetical, Captain Moore.
14 If a new U.S. president came into office and decided
15 that Coast Guard personnel are overpaid compared to
16 the war fighting services -- Army, Navy, Air Force --
17 and immediately ordered a 15 percent cut in the wages
18 for all Coast Guard personnel and extended the
19 minimum time to qualify for a full pension from 20 to
20 25 years, do you think that that would have a
21 negative impact on the morale of Coast Guard
22 personnel, including rescue swimmers and motor
23 lifeboat operators?

24 A. Certainly it's a hypothetical, and it did not include
25 that are they going to make more than they did last

1 year, and I think --

2 Q. A 15 percent cut is a reduction in their wages.

3 Assume a 15 percent cut was ordered.

4 A. Yeah, and your --

5 Q. Did that have a negative --

6 A. In your hypothetical? In your hypothetical, it would
7 be. But it's different than in the situation here.

8 Q. Okay. Now, in your testimony at page 70 -- or at
9 page 90, you say that the state pilotage ground is
10 becoming more attractive to candidates, not less.

11 And I'd like to put on the screen the -- a
12 demonstrative exhibit with a table that was in your
13 testimony.

14 A. Okay. Page 90.

15 Q. You'll be able to see this on our screen in a moment.

16 A. Okay. Okay.

17 Q. And in your testimony regarding this topic, where you
18 were talking about the pilotage ground in Puget Sound
19 becoming more attractive to candidates, not less --

20 A. We're just trying to unfreeze you here.

21 MR. HAGLUND: Okay. I don't know what's
22 happened. I don't see any --

23 MS. DeLAPPE: It's on his side.

24 THE WITNESS: Okay. I can hear you just
25 fine.

1 MR. HAGLUND: Okay.

2 JUDGE HOWARD: Mr. Haglund, we see the
3 diagram I believe you're trying to share.

4 MR. HAGLUND: Okay. Well, it -- for some
5 reason, I've lost my video, but we'll proceed without
6 it for the time being.

7 BY MR. HAGLUND:

8 Q. What is on the screen, Captain Moore, is a table --
9 and now it looks like I'm back -- that was contained
10 in your testimony at, I believe, page 90. And it's a
11 recap of data in bar chart form regarding BPC pilot
12 exams.

13 You're familiar with this chart, and this is
14 actually the format that the BPC uses for this data;
15 correct?

16 A. That is -- yes, that's correct.

17 Q. And on the right, you added to your testimony on this
18 page the data from the 2021 exam; correct?

19 A. That's correct, yes.

20 Q. And in your testimony you state, quote, "Evidence
21 suggests the 2020 tariff decision made Puget
22 Sound even more attractive to potential pilot
23 trainees because 25 percent more of them submitted
24 applications in 2021 than in 2018."

25 Do you recall that testimony?

1 A. I do recall taking a look at how many applicants that
2 weren't qualified and making a statement that it's
3 obviously attractive, otherwise wouldn't have that
4 many applicants.

5 Q. Okay. So let's go down -- and what we've done is
6 we've taken the data, the numbers of individuals,
7 applicants. And I wanted to ask you some questions.

8 So this is the test data underlying your bar
9 chart in your testimony for the 2018 pilot trainee
10 exam and the 2021 exam. And you're right that there
11 were more applicants in 2020 for the 2021 test, 40.
12 And three of those were determined to be unqualified.
13 So you end up with 37 candidates qualified to take
14 the test. And the test is two part.

15 There's a written test and a simulator test
16 separately; correct?

17 A. The exam, and then those that passed the exam are
18 authorized to take the simulator evaluation. Two
19 steps.

20 Q. Two steps. And the Order 09 that you referred to as
21 making things more attractive came out on
22 November 25th of 2020.

23 Do you recall that it was late November of 2020
24 when the order was issued?

25 A. Thanksgiving time, and then it got implemented in

1 late January '21, as I recall.

2 Q. And the test occurred on April 5th, according to the
3 BPC annual report for 2021, April 5th of 2021. That
4 was some four months following the issuance of the
5 order.

6 And when we look at the number of qualified test
7 takers who actually took the test in 2021, it's a
8 pretty significant decline below those who took the
9 test who were qualified to do so in 2018.

10 You see a drop from 71.4 percent in 2018 to
11 59 percent -- 59.6 percent in 2021. And then when
12 you look at who passed, it was a high passage rate,
13 80 percent of the 20 tested in 2018 passed, 16. And
14 in 2021, only 50 percent of the 22 who took the test
15 passed.

16 Wouldn't you agree that that shows a significant
17 problem in terms of the number of qualified -- highly
18 qualified candidates who actually took the test and
19 that likely -- well, I'll stop with that question. I
20 have another one right after that.

21 Wouldn't you agree that this data shows that a
22 much lower percentage of those who took the test were
23 highly qualified candidates because 50 percent
24 failed?

25 A. So I would not agree with that assertion. I'll tell

1 you why.

2 If you're going to look at statistically
3 significant information, you really need to not
4 cherry-pick the last two exams. You look at 2008,
5 2012, 2016, 2018, 2021. Secondly, you have to take a
6 look at what changes were there in the exam.

7 Thirdly, the third party that establishes the exam
8 cut line, you need to understand the process of the
9 exam cut line. And then fourth, I would posit that
10 if every applicant who is qualified to take the exam
11 passes, that maybe the exam and simulator process is
12 not tough enough. We want high standards, and it
13 should be difficult to get through the exam and
14 simulator. And conversely, I would say we want the
15 highest standards there to get them into the training
16 program. And then you want a very comprehensive,
17 high standard training program or they do not get
18 licensed.

19 And in the past, you've had people that have
20 not -- have gotten into the training program that did
21 not succeed that ended up suing. They wanted to get
22 in. But in reality, when you take a look at it, not
23 everyone is going to pass the exam simulator and
24 training program because they're high-standard-based
25 programs.

1 Q. Captain Moore, one of the major themes I take from
2 your testimony is that it's most important for the
3 Commission to look at what's happened in the last few
4 years, what's happened since the last -- since the
5 last rate order. And what's happened since the
6 last rate order. And what's happened since the
7 last -- what's happened since the last rate order is
8 a precipitous drop in the number -- in the percentage
9 of people qualified who took the test, and a
10 precipitous drop in the percentage who passed.

11 Doesn't that indicate there's something seriously
12 wrong, as it's most likely that the drop in test
13 takers was a function of the poor result in Order 09
14 for Puget Sound Pilots?

15 MS. DeLAPPE: I would object to this style
16 of questioning, of first stating an opinion, and then
17 not checking whether the opinion is -- has any
18 veracity at all with the opinion -- in the opinion of
19 the witness. And then going on to asking further
20 questions.

21 MR. HAGLUND: I'm entitled --

22 JUDGE HOWARD: I think -- I'm going to --
23 unless the question is -- a particular question is
24 difficult for the witness to answer because it's
25 unclear, I think Mr. Haglund is entitled to pose a

1 statement and see if the witness agrees with it.

2 But since I am talking now, I do want to --
3 Mr. Haglund, after you're done with this topic, I
4 think it would be a good time to take a break. But I
5 don't want to interrupt you in mid topic.

6 MR. HAGLUND: Okay.

7 MS. DeLAPPE: If we can keep it to one
8 statement at a time, I think that would be a little
9 easier.

10 BY MR. HAGLUND:

11 Q. Captain Moore, isn't it true that of the 11
12 candidates who passed in 2021, three of them departed
13 for other pilotage grounds, leaving only eight
14 candidates for Puget Sound on the ranked list?

15 A. I've not tracked all of them. We have had candidates
16 in the past leave -- not leave the list, but apply at
17 the same time, for example, to San Francisco. And
18 when an opening for training came up, two candidates
19 that I can recall in my time here chose there.

20 But it's also been the reverse. We have also
21 been able to attract licensed pilot -- state-licensed
22 pilot in Alaska, a couple of them to -- to become --
23 to take the exam here and train here as well.

24 So I think if you're talking numbers like that,
25 you have to think about statistically significant

1 evaluation and look at the entire picture.

2 And in that case we have a 1996, 2005 exams, it's
3 important -- and it is asterisks there -- that
4 federal pilotage endorsement for the area was not
5 required starting in 2008, which allowed more
6 candidates -- you can see by the applicants there --
7 more candidates to qualify to take the exam, as
8 opposed to trying to sort of beg for rides to get
9 their 12 trips in for each of the charts they had to
10 write.

11 So that's a big significant difference, 2008.
12 And I would say as you go forward here, we need to
13 understand better what the exam or simulator process
14 is. At the end of the day, I think the answer is, do
15 you have -- do you have qualified people on a list
16 ready to train in order to fill any open spot, and
17 that has always been the case.

18 Q. Captain, were two of the candidates who departed
19 were -- left for -- rather than train in Puget Sound,
20 left for Grays Harbor because of a much improved
21 economic situation there, including a raise in the
22 base salary to \$350,000?

23 You were aware of that, were you not?

24 A. You posit a nexus that says because of the raised
25 salary, as if it's the only factor. If you talked to

1 Captain D'Angelo out there, he lives in Grays Harbor,
2 he likes his lifestyle out there. So there are other
3 factors. Real complicating factor there is they do
4 not have enough work for two pilots. And they --
5 "they" being the port -- have a basket full of
6 charges that they deal with to make their selves --
7 themselves competitive. And they have to make sure
8 that they have more than one pilot. And Captain
9 D'Angelo, although he could do almost all their work
10 because they don't have that much, you can't rely on
11 just one pilot. He could be sick, has vacation, and
12 so forth. So they chose what they did out there, and
13 they're hopeful that they get enough -- can attract
14 enough business -- competitiveness to be able to have
15 actually between two and three pilots' worth of work,
16 which would be a drastically different situation.

17 MR. HAGLUND: Your Honor, I'll stop there
18 for the break and re -- I have a little bit more on
19 this, but I'm sensitive to your request. And so we
20 can take the break now.

21 JUDGE HOWARD: All right. Thank you. I
22 appreciate it. Let's take a brief five-minute break.
23 And let's say we rejoin here at 3:48. We are off the
24 record.

25 (A break was taken from

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

JUDGE HOWARD: All right. Let's be back on the record. We're just returning after a short break and resuming with Captain Moore's cross-examination.

BY MR. HAGLUND:

Q. So, Captain Moore, were you aware that the last Alaska pilot to transfer into Puget Sound was in 2008?

A. I believe so. I think he was a witness in the last case.

Q. So we haven't had a transfer from Alaska in 15 years then; correct?

A. I think you had an Alaska marine highway master, which has to have first class pilotage. I don't think you're including him in that mix. So you have Washington State ferry masters and also Alaska marine highway masters serving southeast Alaska inside -- inside passage that came down and became licensed. In fact, he was president of PSP for a while.

Q. Going back to the chart we had on the screen, which -- I wanted to know just the -- show the whole thing. I wanted to look at the data. Looking at that 2021 test data, you would acknowledge, Captain Moore, would you not, that the one-third reduction in the number of passing applicants, 16 in

1 18, an 80 percent pass rate, down to 11 in 2021,
2 50 percent of the 22 who took the test, is going to
3 necessitate a 2024 exam, because there aren't enough
4 trainees in the pipeline? And they've already
5 announced that test will be coming in 2021,
6 correct -- 2024, I'm sorry.

7 A. 2024. I think the complete answer there is the Board
8 of Pilots Commission changed the frequency of the
9 exams after candidates were sitting on a list for ten
10 or 11 years, back in the '90s and early 2000s. So
11 they made it the maximum time you could be on a list
12 is four years. So by definition, they're -- they're
13 not going to be able to give an exam farther apart
14 than that because they had exhausted the list.

15 So if you have an eight-year time frame, 2016 to
16 '24, one could expect, at an absolute minimum, if you
17 were right on the money to the day, three exams, one
18 in 2016, one in '20, one in 2024, versus four exams,
19 2016, 2018, 2021, and 2024 -- and it remains to be
20 seen if they're going to stick with the plan in
21 2024 -- based on current workload, they may very well
22 do that. But that would be four years in eight years
23 where the minimum would have been three exams. And
24 there's no way we should expect the BPC to be so
25 perfect in when they give an exam and administering

1 the training program as to always exhaust the list,
2 which they have done, to their credit, without
3 somebody being on the list and then having to retake
4 the exam. To always exhaust the list and keep the
5 snake moving, the pipeline moving, in order to
6 provide licensed pilots at the rate needed, which is
7 about two and a half per year on average.

8 Q. Let's go to Exhibit MM-87X. Do you have it? Is it
9 on your screen?

10 A. I think it's from you. You just blew it up, didn't
11 you?

12 Q. Yes, we did.

13 A. Okay.

14 Q. So this is a letter that was submitted into the
15 record through the public comment process from one of
16 those 11 successful 2021 test takers who is now a
17 licensed Grays Harbor pilot, Captain Ryan Leo. And
18 he states very plainly in the last -- in the letter
19 that he wanted to go to Puget Sound but decided, for
20 primarily economic reasons, to go to Grays Harbor.
21 And in the last paragraph he says, "I believe that
22 Puget Sound Pilots will continue to have difficulty
23 attracting professional mariners and retaining
24 pilotage talent as long as the compensation and
25 benefits for the district are below the national

1 average, particularly given the high cost of living
2 in the Puget Sound area."

3 Do you have any reason to doubt the -- this
4 statement by Captain Leo?

5 A. I see a little bit of conflict between his
6 paragraph 2 and paragraph 4. In paragraph 2, he
7 talks about compensation and benefits, training
8 program was shorter, and there are work/life benefits
9 at Grays Harbor. So it seems to me he just listed
10 compensation and benefits, number one. Two, the
11 training program is shorter, which I talked about
12 earlier. Long Beach, for example, 3,000 training
13 trips versus somewhere around 350 here. And their
14 work/life benefits. And I mentioned Captain D'Angelo
15 who's been out there a long time. He likes the
16 work/life mix out there. So I'm not going to say to
17 each his own, but there are certain fits that are
18 better for candidates than others.

19 Q. But that's -- what you have just related is not what
20 is said in this last paragraph the letter, is it?

21 A. No. It says it in paragraph 2 of the same letter.

22 Q. Now, Captain Moore, the Columbia River Bar pilotage
23 ground and that of the Columbia River are quite
24 different. One is a shorter run across a dangerous
25 bar, the other is a much lengthier,

1 challenging 600-foot wide channel, multiple ports,
2 six, seven, eight hours per assignment time. Those
3 are grounds that are quite different in their
4 configuration, in the nature of the pilotage
5 assignments; correct?

6 A. Yes.

7 Q. And -- but wouldn't you agree --

8 A. With the exception they're both in Oregon, of course.
9 And under the same board of pilotage commissions. So
10 I would say they have some similarities with respect
11 to that. But the grounds are different.

12 Q. And the -- wouldn't you agree that the -- that pilots
13 have a skill set when they reach that pinnacle of
14 their merchant mariner career where they're experts
15 in ship handling or of various types, from the
16 various feeder opportunities that there are varies,
17 oceangoing vessels, towboats, et cetera, fish boats,
18 to qualify to become a pilot, that all pilots bring a
19 relatively similar skill set to the training to
20 become a pilot on a particular ground. And those
21 same pilots interact with each other at Grenoble,
22 France for a week of manned-model training programs
23 at five-year intervals throughout their career.

24 They're all doing the same work with different
25 local conditions, are they not?

1 A. I don't agree they bring the same skill sets to the
2 mix. I think a Washington State ferry master has a
3 set of skills that's different than an oceangoing tug
4 master, which is different than a cargo ship calling
5 on various ports. I think they bring very valuable
6 different skills into the mix. And the training
7 program at each ground is tailored -- is tailored to
8 use those skills that they come in with, but to make
9 sure they're developing skills tailored for that
10 ground.

11 So I don't think they come in with the same
12 skills. Do they all know navigation, yes. Do they
13 all know rules of the road, yes. Do they have to
14 have some training in other safety issues, stability
15 and so forth, yes.

16 But they come in with different experiences. It
17 goes back to the diversity of experience question.
18 It's healthy to have that diversity in experience.
19 But they've got to go through the training lens in
20 that particular pilot ground to fine tune their
21 skills to fit that service.

22 Q. The Columbia River -- as a matter of policy, the
23 State of Oregon's pilotage board and the Louisiana
24 Pilotage Fee Commission in Louisiana, two examples,
25 have both decided that, as a matter of policy, that

1 the -- in Oregon, that the Columbia River Bar Pilots
2 and the Columbia River Pilots, with dramatically
3 different grounds but deploying -- both deploying
4 pilot skill, should be paid similarly, that there
5 should -- the term that both jurisdictions use is
6 income parity between Columbia River Pilots and the
7 Columbia River Bar Pilots.

8 Do you think that's a bad policy?

9 MS. DeLAPPE: Objection. Assuming facts not
10 in evidence. Is this just a hypothetical or is there
11 evidence --

12 MR. HAGLUND: It's not -- it's not a
13 hypothetical. It's set out in one of the rate orders
14 that's an exhibit to David Lough's testimony.

15 JUDGE HOWARD: I'll allow the question.

16 THE WITNESS: Well, they're under the same
17 Board of Pilotage Commission. I guess they go
18 through the same -- you would know, you were down
19 there. I don't know which process they go through by
20 which they get a -- an order.

21 Like I said, I was pretty familiar with the
22 2010 order where they set a target net income and a
23 target gross income. And I'm pretty familiar that,
24 unless things have changed, they have to pay for
25 their own medical and their retirement and so forth.

1 So I don't know if it's exactly the same in the bar
2 versus the river with respect to all that. I can
3 only imagine that the number of assignments and the
4 type of assignments and the length of time on a
5 vessel is different for the bar than it is for the
6 river. And so I guess the Board of Pilot Commission,
7 I can only assume they've taken all of these factors
8 into consideration when they set rates for pilotage
9 districts in Oregon. I don't know that much about
10 Coos Bay. I know the port there, but I don't know
11 what they're doing in Coos Bay in that regard at all.

12 BY MR. HAGLUND:

13 Q. So you -- you would acknowledge that parity may be an
14 appropriate policy for a pilot group regulator in a
15 given state to adopt; is that fair?

16 A. I don't know if I'd look at it that way. I think
17 when you look at comparability somewhere, like LA and
18 Long Beach, really, if you fly over, it looks like
19 one complex. It's got a lot of comparisons. There
20 are some differences. Long Beach handles tankers.
21 LA typically doesn't do much of that. But they have
22 the same waters and so forth. And likewise here, I
23 think one could start making an argument that us and
24 the B.C. pilots, maybe like Great Lakes, in
25 transboundary waters, have similar weather and

1 waterways and so forth. With the exception that B.C.
2 pilots also handle Prince Rupert, 450 miles to the
3 north and as an inside passage with cruise ships.

4 Other than that, I can't think of districts that
5 are that comparable, really, to do these kind of
6 things. It's very complicated. But those are two
7 examples where possibly -- you know, possibly that --

8 Q. Okay. I would like --

9 A. -- comparison could be made. I don't know how they
10 do it in Oregon and -- for the court reporter, I
11 don't want to -- am I talking too fast for the court
12 reporter?

13 Q. Let me turn to another topic: tariff funding for the
14 PSP pension.

15 Would you acknowledge, Captain Moore, that in
16 2001, the PSSOA, Puget Sound Steamship Operators
17 Association, the predecessor to the PMSA, and the
18 Puget Sound Pilots made a joint proposal to the Board
19 of Pilotage Commissioners that the PSP retirement
20 program's annual accrual rate be increased from
21 1.25 percent to 1.5 percent for each year of service?
22 That was a joint proposal?

23 A. Well, to be clear, I was not there. I was captain of
24 the port of the Coast Guard at the time. I have
25 read -- I have read a document to that extent. And

1 as was explained to me by those involved, there was a
2 number of factors that went into -- went into
3 discussion and compromises on both the pilot side and
4 industry side to come to the self-correcting formula
5 agreement it did. If I recall right, that was the
6 beginning of the second five-year term of a
7 self-correcting formula, which had many, many, many
8 factors besides retirement.

9 It had workload and target net income and so
10 forth.

11 Q. Okay. Captain Moore, let me put an exhibit on the
12 screen.

13 If you could put up the -- it's Exhibit 99 -- or
14 MM-90X.

15 If we can go to --

16 A. I see it. I see it.

17 Q. Okay. And this is -- you've seen this before, you --
18 you were --

19 A. I have seen that before. I've seen that -- those
20 logos and that front page, for sure.

21 Q. Yeah. This is the MOU 2001. If we could scroll
22 through to I think the third page.

23 Here we actually see use of an annual tariff
24 adjustment. This is a COLA that was agreed upon
25 that -- for the Seattle/Tacoma/Bremerton area CPI

1 that was in place for the life of this MOU; correct?

2 A. Give me a second to read it. You're on page 3? It's
3 a little blurry on yours. We're calling it up here
4 so I can read it. Page 4.

5 MR. HAGLUND: This is page 3. And now it's
6 been blown up.

7 THE WITNESS: I can see most of the
8 paragraph. The pictures are cutting off some of it.
9 But I can see it talks about the consumer price
10 index. Yes. I'm aware that was one of the many
11 factors that were involved in the self-correcting
12 formula. And, again, there were negotiations and
13 compromises on both sides to -- to get to that
14 formula, from what I was told, because I wasn't
15 there.

16 BY MR. HAGLUND:

17 Q. And in -- let's go to Exhibit 91X, and we can make
18 this a little shorter.

19 This is an excerpt -- or the first page of the
20 minutes of the CPC meeting in May of 2001. And if
21 you look at the highlighted area, if you could blow
22 that up, please.

23 And you see that the presentation to the Board of
24 Pilotage Commissioners is to increase the accrual
25 rate for the pension from 1.25 to 1.5 for each year

1 of service. And that was presented by the three
2 parties, PSSOA plus Polar Tankers plus PSP.

3 And it was approved by the Board of Pilotage
4 Commissioners at that meeting, was it not?

5 A. Well, I think just to be in context here --

6 Q. Could you -- Captain Moore, could you please just
7 answer my question?

8 MS. DeLAPPE: Objection. He is trying to
9 answer the question. If you could please allow him
10 to talk about the context since you are blowing up
11 only a portion of the page. And he has the full page
12 ahead of -- in front of him.

13 THE WITNESS: Thank you.

14 I see your blown-up version there with bullets
15 there, the six bullets there. And I -- again, I know
16 there are many factors involved. And I note also
17 there's a friendly amendment from Commissioner Norman
18 who stated the motion, in order to specify that the
19 bulleted items listed above are factors upon which
20 the proposed new tariff is based and that the board
21 intends to adopt only the 1.32 percent tariff
22 increase. And that was consistent with what I saw at
23 the Board of Pilotage Commission. They made an
24 overall tariff adjustment. They did not make
25 specific line item adjustments. And my experience

1 there, it was all taken and put in one big package
2 and then a tariff decision was made. And that's what
3 that friendly amendment from Commissioner Norman,
4 which was adopted, said right below those bullets
5 that you're showing.

6 MR. HAGLUND: Could you go back to the full
7 page, please, Mr. Crandall?

8 THE WITNESS: We were warned by the chair,
9 during my time there, Chair Dudley, that not doing
10 the line items, you're going to make your case, you
11 will make a presentation, and ultimately there were
12 motions made, didn't succeed, finally did succeed.
13 And he'd make it real clear, that same thing, that
14 we're making an overall tariff adjustment, not a
15 line-item-by-line-item adjustment. And so that's
16 very consistent with what Commissioner Norman --
17 amendment was that was accepted.

18 BY MR. HAGLUND:

19 Q. Isn't it true, Captain Moore, that the MOU makes it
20 very clear that the increase in accrual rate to
21 1.5 percent and the total cost of the PSP pension is
22 to be an operating expense of PSP that is to be
23 funded by the tariff?

24 Isn't that plain from the MOU?

25 A. Okay. So I think it's really important to describe

1 the MOU as an agreement between two private parties,
2 and it was not obligatory on the State's behalf, the
3 State regulatory agency, to accept any of it. It was
4 simply to get to a joint proposal. It was simply to
5 arrive at a joint proposal to the Commission. And so
6 that was also made clear by the chair. We're not
7 mandated to follow any of what you guys bring in
8 here. If you bring in a joint proposal, we will
9 fully consider it. But it is our decision, not
10 yours. So there was no binding agreement there.

11 We made it real clear there are a lot of
12 different factors in the mix, not just one. And so
13 there are compromises that were involved in this
14 whole process and that -- what you're asking about is
15 articulated right there in the minutes and is part of
16 the MOU. But it's just one of other factors. You
17 cannot take it in isolation. In my view, it takes it
18 out of context and distorts the entirety of the MOU.

19 Q. But Captain Moore, you weren't even there for -- you
20 were not a part of PSSOA or even PMSA in 2001. You
21 were still captain of the port, were you not?

22 A. I was. But I was there when Mr. Tabler sent us a
23 letter terminating this agreement. And I was in this
24 job. And it was this agreement, this MOU from 2001.
25 And that discussion -- I just had, that took place,

1 you can't terminate and go back and say this is one
2 element we don't want to terminate. It's part of an
3 overall agreement. You can't cherry-pick one item
4 out of 20 and say, no, no, we want to keep this one
5 and terminate the rest. The letter is clear. They
6 terminated the agreement in whole. Unfortunately,
7 because I think the self-correcting formula had a lot
8 of merit.

9 JUDGE HOWARD: Captain Moore, let's -- I
10 think we're a bit beyond the question posed. Let's
11 wait for the next question.

12 THE WITNESS: Okay. Yes, Your Honor.

13 BY MR. HAGLUND:

14 Q. You say in your testimony that all it would take is
15 a, quote, "vote of the pilots," unquote, to change
16 the terms of the retirement plan.

17 Are you serious in your suggestion that
18 two-thirds -- to reduce benefits, it would take a
19 two-thirds vote of both the existing working pilots
20 and all the existing retirees to change any component
21 of this legally binding pension plan?

22 Are you serious in your suggestion that there
23 could ever be such a successful vote when this is
24 promised to every pilot when they walk in the door
25 upon licensure?

1 A. That notion came to me from a retired pilot, that
2 they could vote to increase, decrease. They could
3 even vote to terminate Puget Sound Pilots as an
4 association and form another one. And they were
5 concerned about that. And so the notion of voting --

6 Q. Captain Moore --

7 A. -- was brought to us. It was brought to us. I did
8 not come up with that. It was brought to us by a
9 retired pilot. All we have to do is vote. We could
10 make it 1.75, we can make it 2, or they could do
11 something else with it. It's a vote -- it's a
12 bylaw -- it's how the pilots choose to distribute
13 their revenues amongst themselves. It wasn't -- it
14 wasn't anything that we're party to. It's the pilots
15 get to control that in their bylaws.

16 Q. You have a copy of the plan. You've seen it. It has
17 a two-thirds voting requirement, does it not?

18 A. That's my recollection. And I --

19 Q. Okay. Thank you.

20 A. I can't recall -- I'm sorry. I can't recall if it
21 includes retirees or not. I think maybe it does. I
22 don't know.

23 Q. Okay. Now, would you -- would you agree,
24 Captain Moore, that the annual pension expense for
25 PSP is a known and measurable expense on an annual

1 basis? It's easy to calculate. It's a known
2 expense.

3 Would you agree?

4 A. It is definitely listed in the annual -- the
5 financials of PSP when they turn them in. When they
6 turn in the audited financials, we then know --

7 Q. My question --

8 A. On the prior year.

9 Q. My question -- you know how the formula is
10 determined.

11 My question for you is: It's a -- it's known
12 that PSP has a pension plan. It's known that there
13 was a -- a joint proposal to set the annual accrual
14 rate at 1.5 percent in 2001. It's easy to predict
15 the costs because you know who is already retired.
16 It's a fixed amount per pilot per year. And if you
17 have new retirees, it's easy to calculate. Would you
18 agree that it's fairly simple math, on an annual
19 basis, to project the likely cost of the pension
20 plan?

21 A. It is their retirement program. That's what they
22 call it. And they know better than we do who is
23 going to retire, who is planning on retiring. If you
24 had perfect knowledge about who was going to
25 retire -- and, of course, you've got to look at the

1 other end of that scale, who is no longer collecting.
2 If you have that both ends known, then it's a math
3 calculation.

4 But that is a private retirement plan. Something
5 we've talked about for a long time about what's going
6 to be the end result of this unfunded plan. And
7 hopefully we'll be able to have some productive
8 discussions about that in the future and try to
9 figure that one out.

10 Q. Captain Moore, PMSA has long experience with the
11 pay-as-you-go pension plan benefitting the San
12 Francisco Bar Pilots; correct?

13 A. I don't have direct information on that. It's the
14 only other pilots ground on the West Coast or the
15 Pacific that I know of that has some kind of
16 multiplier times number of years of service. I don't
17 know anyone else who really has that -- that formula.
18 So --

19 Q. It's for the --

20 A. That's what I know. That's what I know.

21 Q. For the San Francisco bar, it's actually a matter of
22 statute. The 1.84 percent and the way the plan is
23 supposed to be administered and funded is actually in
24 statute; correct?

25 A. From my understanding, the statute doesn't apply

1 anywhere else in California. But I do believe it
2 just applies to San Francisco and Suisan Bay, or
3 however that's described. I think that's the place
4 it applies to.

5 Q. Yeah. And PMSA has never gone to the legislature to
6 try and defund the San Francisco Bar Pilots pension,
7 has it?

8 A. I don't know what discussions have taken place about
9 how to fund that and if there's been transition
10 discussions around that. I don't know if that's been
11 part of the, you know, discussions with BPC -- BOPC,
12 I think they call it -- and the bar pilots there.
13 I'm not aware of any discussions about that.

14 Q. Okay. Could we go to MM-94X?

15 This is a table drawn from information in the --
16 let me make sure it's up on the screen.

17 This is a table that shows the 17 pilot groups in
18 the country that all have pay-as-you-go pension
19 plans.

20 And it shows that in terms of annual accrual
21 rate, PSP is 13th of the 17, San Francisco Bar Pilots
22 are No. 10 at 1.84. And then you see accrual rates
23 that go all the way up to 2.5 percent for the Port
24 Everglades Pilots.

25 You would acknowledge, would you not, Captain

1 Moore, that there are a significant number of major
2 U.S. pilot groups with precisely this type of pension
3 plan; correct?

4 A. I am -- I'm looking at your list. I'm much more
5 familiar with all of the pilot grounds in the
6 Pacific. I see, for example, Los Angeles on here at
7 2.16 percent, and it does not mention that they
8 contribute 7 percent of their income each year. So
9 there are some differences here, but I really don't
10 know Miami and New Orleans as well as I know San
11 Diego, Port Hueneme, LA, Long Beach. I only know two
12 out here that have this, and that's San Francisco and
13 Puget Sound. And there's 12 others that do not on
14 the Pacific. And I know the Pacific much better.
15 That's where I spent my entire year. So I know the
16 coast and Alaska fairly well. Not like I would -- I
17 don't know the East Coast and Gulf Coast nearly like
18 I do here.

19 Q. Now I'd like to shift to some questions about Grays
20 Harbor.

21 You were aware, were you not, Captain Moore, that
22 the Port of Grays Harbor sought a rate increase in
23 late 2019 that included a new pension surcharge on
24 ship tonnage to fund the two percent per year PERS
25 defined benefit plan for the Grays Harbor Pilots.

1 You were aware of that, were you not?

2 A. I'm not recalling that specific. But I do know that
3 they are public employees. And I do talk to the
4 executive director and his staff out there, from time
5 to time, when they are going to adjust rates or they
6 have a training program issue. I don't recall the
7 exact -- I don't recall exactly that number. But I
8 knew they're in the public employment retirement
9 system which is a public retirement.

10 Q. Okay. So let's look at Exhibit MM-83X and if we can
11 scroll to the second page. Keep going. Another
12 page. There it is. Okay.

13 Here's the tariff that Port of Grays Harbor
14 submitted to the UTC in December 2019. And it's got
15 a special new item, "pension charge."

16 Do you see that?

17 A. I do see it.

18 Q. You oppose a pension surcharge in this rate case;
19 correct?

20 A. In -- in the Grays Harbor?

21 Q. No. In -- in PSP's case, this pending case --

22 A. Yes.

23 Q. -- you oppose any sort of automatic adjustor to fund
24 the pension, either on a pay-as-you-go or defined --
25 fully-funded defined benefit plan basis; correct?

1 A. We did oppose that -- I did oppose that in my
2 testimony. I'm looking at the Grays Harbor one, and
3 you're talking about a pension charge there; correct?

4 Q. Right. And it's fair to say that you did not make
5 any opposition to this new charge when this was --
6 when this tariff was submitted, did you?

7 A. I'd have to clarify that there are two different
8 things going on out there. One is retirement under a
9 system where they did not have enough pilotage to
10 keep an association out there and the conversion to a
11 public employee retirement system. And I am not
12 familiar whether this pension charge is trying to
13 retire the debt on the pilots that dissolve their
14 association or they are directly attributed to the
15 current pilots that are in the public employee
16 retirement system for Washington State. I don't know
17 which one that is.

18 Q. Let's go -- okay. Let's go to MM-85X. This is just
19 for your information, Captain Moore. This is a copy
20 of the UTC Staff evaluation that ultimately reviewed
21 this tariff request. And I think it was a 15 percent
22 increase, and I guess that's what it shows on page 1.
23 And there's a note that there was no -- "no comments
24 referenced" in the second to last paragraph. And it
25 was ultimately approved.

1 And now let's go to Exhibit MM-87X -- or I'm
2 sorry, 86X.

3 And here is an e-mail from you to the UTC
4 regarding the Port of Grays Harbor's tariff request.
5 And it has the date stamp showing that you sent it to
6 the UTC. And if we blow up your comment down below,
7 even though this was a substantial increase in the
8 tariff, PMSA did not voice any concerns or any kind
9 of opposition; correct?

10 A. I have to state the paragraph -- if you read the
11 entire paragraph, it provides full context for the
12 position that they do not have enough work for two
13 pilots. They either have to pay for it out of Port
14 of Grays Harbor revenue or adjust the pilotage
15 charge. And so that entire paragraph does, in fact,
16 describe our position very well. And it's only, you
17 know, five sentences or six sentences. And it
18 describes the unique situation at Grays Harbor where
19 they had to disband their pilot association and go to
20 a public employee situation so they could at least
21 have pilots as they continue to strive to gain ship
22 traffic there, which is not enough to support the
23 pilotage cost. So they have a very unique challenge
24 there. And that's what I articulated in that
25 paragraph.

1 JUDGE HOWARD: Captain Moore, I wasn't -- I
2 was not hearing a direct answer to Mr. Haglund's
3 question.

4 THE WITNESS: Can you repeat the question,
5 please?

6 BY MR. HAGLUND:

7 Q. It's true that you did not offer any opposition to
8 the 15 percent increase in rates; correct?

9 A. I offered options. I did not offer direct
10 opposition. I offered the notion of their options
11 and how to pay for it, either out of Port of Grays
12 Harbor revenues or if they adjust the tariff. And I
13 articulated that in that paragraph. So there's no
14 opposition, but there is background and options about
15 how to proceed.

16 Q. And, Captain Moore, let me ask you this, the income
17 information that is presented in David Lough's table
18 shows that with the benefit -- that Grays Harbor
19 Pilots have a base salary of \$350,000. They've got a
20 COLA set out for the next ten years in the contract.
21 And they receive opportunities for what is called
22 incremental duty pay and gain sharing, such that the
23 Grays Harbor Pilots earned -- it's either '20 or
24 2021, over \$450,000.

25 Do you think it's fair, just, and reasonable for

1 the Puget Sound Pilots, which -- with much more
2 traffic, a significantly larger workload, to be paid
3 less than the Grays Harbor Pilots as you, on behalf
4 of the PMSA, proposed to drop it to \$346,000 of DNI
5 per PSP pilot?

6 A. What comes into play to answer that question is
7 attract and retain. And they have a completely
8 different dynamic on an attract and retain. I do not
9 see an attract and retain problem in Puget Sound. So
10 either you have enough revenue to attract and retain
11 and pay expenses here, or -- or you don't. And so
12 that is a different situation than Grays Harbor, who
13 could go down to 20 vessel arrivals in a whole year
14 and have a one-fifth of a pilot's worth of work and
15 have to come up with a way to have a pilot. It's a
16 very tough situation for them, and it's very apples
17 and oranges, in my view, to try and compare that to a
18 district with 7,000 assignments -- 7,442 assignments.

19 Q. So, Captain Moore, is it your testimony that Captain
20 Sandy Bendixen, when she says in her testimony that
21 with PSP's compensation at the levels it's been, she
22 could not, in good faith, ask any female candidate to
23 consider Puget Sound.

24 Do you think she's just making that up; that it's
25 not a true statement that she believes in her heart?

1 A. What she believes and why she believes it, that's
2 really up to her. We're going to have to look at
3 evidence. Is the evidence indicating that you cannot
4 attract qualified candidates, and there's a
5 qualification list -- you cannot attract qualified
6 candidates to take an exam, to pass an exam, to go
7 through a simulator and to enter the training program
8 and train. And that would be factual and evidence.

9 What somebody feels, I don't know what she feels
10 and why she feels it. I don't know why she chose
11 Puget Sound Pilots to train in when she could have
12 gone to Louisiana or Houston or somewhere else that
13 people like to talk about. She obviously has her own
14 decision-making to make, and that's her belief. And
15 that's fine. She can have that. She can have that
16 view. Until I see evidence of it, I don't subscribe
17 to that.

18 Q. Let's talk a little about the evidence. Did you read
19 the testimony of Kaha'i Wodehouse and
20 Christian Julian, two diverse candidates. Captain
21 Julian is of African descent, and Kaha'i Wodehouse is
22 a native Hawaiian. They make the Columbia River Bar
23 Pilots' percentage of underrepresented communities
24 the highest on the West Coast. Both decided against
25 Puget Sound and went to the bar.

1 Isn't that evidence that there's a problem with
2 the compensation and benefits at Puget Sound Pilots?

3 A. No. I don't think you can take a standalone issue.
4 Captain Julian took the exam here, did not pass the
5 exam; chose to train down there. Articulated that
6 was a shorter training program, and articulated that
7 he liked being able to go to work and come back from
8 work close to where his work is, namely in Astoria.
9 So I think he articulated a couple of different
10 issues there. The fact that he tried -- that's fine.
11 The fact that he tried to take an exam here and was
12 not successful the first time. It's a learning
13 experience, and probably prepared him to take an exam
14 down there. But he also articulated other factors.

15 If you're going to look at diversity, again,
16 statistically significant, the bar does not have 56
17 pilots, et cetera. So it's a very -- it's a small
18 group. If they change by one, it's like
19 Captain Bendixen coming to the Puget Sound Pilots and
20 immediately you go from zero percent women to two
21 percent.

22 Q. So you do not accept as true the very plain
23 statements by Captains Bendixen, Wodehouse, and
24 Julian that the level of compensation and benefits
25 being paid to Puget Sound Pilots is so low that it is

1 a problem for recruitment of top flight diverse
2 candidates.

3 You -- you reject those statements as false; is
4 that correct?

5 A. I have not seen evidence to support that. I've not
6 seen a definition of top flight recruit candidates.

7 What I do see is candidates that can qualify on
8 these very high standards and can take an exam and a
9 simulator test and enter the training program.
10 That's the data that is important here.

11 And so, until you see evidence that there's a
12 problem, people can have conjecture and forecast and
13 try to -- and look in a crystal ball to see what's
14 going to happen. But it hasn't happened. And in my
15 time here, I've heard from Puget Sound Pilots about a
16 mass exit that's going to happen. If we don't make
17 more money, this is going to happen, that's going to
18 happen, we can't attract anybody. I've been hearing
19 that since 2006. I have not ever seen it happen.

20 So forgive me for not really buying into that.
21 But I have been told that many, many times since
22 2006, and it has not happened.

23 Q. Let's turn to another topic.

24 Do you agree, Captain Moore, with the conclusion
25 in the cost/benefit analysis of marine pilotage, the

1 entire marine pilotage system in Canada, that
2 pilotage, quote, "Is the strongest single safety
3 measure that can be employed to reduce the risk of
4 maritime accidents, reducing that risk by a factor of
5 at least 44 times."

6 Do you agree with that conclusion?

7 A. Well, that would require me knowing and assessing all
8 the data. I come from a math background and I like
9 to see the data on that. I understand there are
10 other factors involved in a marine safety system. We
11 happen to have what I consider a really top notch
12 marine safety system here. And pilotage is extremely
13 important in that. But it is not the first line of
14 defense. It is not the only line of defense. It is
15 -- you know, you have to take into consideration
16 construction standards -- I've denied entry when I
17 was captain of the port before you ever get to the
18 pilot ground. I required a tug offshore before you
19 ever get to the pilot ground. And I denied entry
20 because there are indications that a vessel was not
21 safe. And so there are other factors involved before
22 you even get to a pilotage ground.

23 When you get to the pilotage ground, pilots are
24 critically important. So is a vessel traffic system.
25 So are traffic separation lanes. And so there's a

1 lot of factors that get involved. But there are a
2 lot of factors involved before a -- a vessel even
3 gets here. That's what port state control is all
4 about is to keep substandard vessels out, and
5 frankly, to examine them pretty much once a year or
6 more, depending whether it's in LA, Long Beach or
7 here, and to make sure that they're in compliance
8 with federal and international standards.

9 All those things matter. It doesn't mean pilots
10 are not important, and it doesn't mean port state
11 control is not important. They're all important. If
12 you're talking about a pilot in Canada in a serious
13 situation where only -- you got ten seconds to make a
14 choice between A and B outcomes, the pilot is right
15 there. And you want them to be there, and you want
16 them to be trained, and you want them to know what to
17 do.

18 Q. Okay. Given your -- you're pretty clear in your
19 testimony that you don't believe there have been any
20 significant or material changes in vessel risks or
21 risks to pilots since the last rate case concluded in
22 late 2020; is that right? That's a yes or no.

23 A. That's correct.

24 Q. Okay. So I just want to hit some quick bullet points
25 to address that topic.

1 First, is it your position that the continually
2 growing size of the world's fleet in every vessel
3 category, every vessel type, which calls Puget Sound
4 in significant numbers, does not present additional
5 pilotage risks?

6 A. There are a number of factors that get involved in
7 risk. Risk is probability times consequence. You
8 have to look at all the factors. Vessel size is one.
9 Vessel design is another. Newer vessels are
10 typically less risky than older vessels. We have the
11 most rapid renewal in the container sector and bulk
12 sector worldwide that I've ever seen. The data would
13 back that up. Vessels getting larger. Tank vessels
14 used to be larger in the '70s, to be frank. And they
15 have a limit and a cap on the size of tankers that
16 can call here. So tankers are not involved in this
17 mix here for us. The grain ships here are pretty
18 much the same size and are not growing in what
19 they're calling the Puget Sound. It's the container
20 ships and cruise ships that are larger. And it also
21 is the container ships and cruise ships that are the
22 newest. So you take a look at protectively located
23 fuel tanks, better fuel delivery systems, changing to
24 cleaner fuels which flow better to the engine,
25 alternative fuels, like TOTE is using LNG now. There

1 are a lot of things happening as the fleets renew.

2 And so vessel size is a factor, and whether
3 you're sitting low in the water, like a tanker, which
4 is limited to 125,000 dead weight tons, since the
5 Coast Guard put that rule in place 40 years ago, or
6 it's got a sail area. You take a look at all of
7 those factors, and size is part of that. But it is
8 not the only part. It's like pilotage is really an
9 important part of the marine safety system, but it's
10 not the only part.

11 Q. Captain Moore, I'm trying to ask a series of
12 questions which ask you to respond yes or no, whether
13 it's an increasing risk factor or not.

14 Wouldn't you acknowledge that the increasing size
15 of the ships, as documented extensively in shipping
16 economist Ken Eriksen's testimony, that the greater
17 the sail effect of a larger vessel, the greater the
18 challenge in certain conditions?

19 Would you agree with that or not?

20 A. I would agree with that and other factors. That's
21 all I will say. I would agree with that.

22 Q. And would you agree that the recent news that the --
23 I forget whether it's MSC or which container carrier
24 it is, but there's recent information that came up at
25 the last pilot board meeting that the owner of a

1 23,000 TEU container vessel is inquiring about making
2 a call here this spring in Puget Sound. The largest
3 sized container ship previously was the -- I believe
4 it was 18,000 TEU, or was it -- I think -- actually I
5 think it's 13,000 TEU, Benjamin Franklin.

6 And wouldn't you agree that a 23,000 -- it was
7 18,000, Captain Carlson is correcting me -- but that
8 significant increase in total TEU capacity coming
9 here likely this year, 5,000 more TEUs than the
10 previous record, creates additional risk to those
11 assignments, and additional training, significant
12 work by the pilots to figure out how are we going to
13 manage this behemoth in our constricted waterways.

14 That's an increasing risk, is it not?

15 A. It is an increasing risk. And identifying -- I like
16 the pilots taking a look at what kind of tugs do you
17 need and so forth. It was a CMACGM Benjamin
18 Franklin. It was 18,000 tons. It was several years
19 ago, and it was a test run to see how it could be
20 handled. That's appropriate. To go to a simulator,
21 to do the test runs, to evaluate how many tugs are
22 necessary, do all the booms have to be up on the
23 container, all those factors are mitigating factors.
24 And that's -- that's part of the reason MSC contacted
25 the pilots, to figure out what mitigating factors are

1 there, can you handle a vessel this size, what do we
2 need to do on the tug side of the -- tug package.
3 That's a good discuss -- that is a very good
4 discussion to have and in place way before a vessel
5 gets here.

6 Q. Captain, please stick to my question.

7 I asked if that was an increasing risk and you
8 said yes. And so let me go to the next one.

9 A. Okay.

10 Q. Did you observe in the last couple of weeks that the
11 Biden administration approved the Willow oil drilling
12 project in Alaska, which will produce 180,000 barrels
13 per day of crude oil that will increase the current
14 level of crude production in Alaska by over a third,
15 almost 40 percent.

16 Does not the fact that once that new project
17 comes online will result in a significant increase in
18 the number of oil tankers coming to Puget Sound for
19 refinement of that crude -- isn't that a risk we can
20 see on the horizon that will be growing with
21 significantly increased traffic in the second highest
22 vessel category in terms of total transits in 2022,
23 second only to containers?

24 MS. DeLAPPE: I would object to all of the
25 facts not in evidence and outside the scope of

1 testimony.

2 JUDGE HOWARD: I'm going to grant that. I
3 am concerned that we're referring to a number of
4 facts not in evidence before posing a question. If
5 we can be --

6 MR. HAGLUND: Well --

7 JUDGE HOWARD: -- referring to an exhibit or
8 asking it -- at least asking the witness, breaking it
9 down, asking is the witness familiar with something
10 and then posing a question.

11 BY MR. HAGLUND:

12 Q. Sure. Did you -- it was identified for you.

13 Did you look at Exhibit MM-112X? That's a news
14 article about this oil project.

15 A. Oh, a Wall Street Journal article?

16 Q. Right.

17 A. Okay. I'm looking at it. I didn't read the entire
18 article. I saw an announcement and a headline. So
19 I'm much more familiar with Alaska production over
20 the last 30 years than I am with this.

21 Q. Okay. Well, if -- if -- let me just ask you a
22 hypothetical.

23 A. Okay.

24 Q. If -- if, within the next five years, there's going
25 to be a 35 percent increase in the number of oil

1 tankers coming to Puget Sound, would you agree that's
2 an increased risk for the pilotage district?

3 A. It's increased traffic. I -- I have seen tanker --
4 tanker traffic go down, but if you're going to go
5 down to the bottom of tanker traffic and then build
6 back up, it's going to be more transits, for sure.

7 Q. My question, Captain Moore, is if you see a one-third
8 or more increase in the number of tankers from last
9 year associated with this dramatic increase in oil
10 production in Alaska, wouldn't you agree that more
11 oil tankers coming to Puget Sound is an increase in
12 pilotage risk?

13 A. If you compare it to last year and you're going to
14 increase, you will have more transits and more risks.
15 Probability --

16 Q. Okay. Thanks.

17 So if we could pull up Exhibit MM-109X.

18 Captain Moore, this was another exhibit
19 identified for you to review or have available for
20 questioning this afternoon.

21 Wouldn't you agree that the high stacking of
22 turbine -- wind turbine parts such that it blocks the
23 visibility line of sight from the bridge to be able
24 to see forward of the bow is a new development that
25 has led to, in this instance, a joint letter from the

1 Puget Sound Pilots, Columbia River Pilots, and San
2 Francisco Bar Pilots to the Coast Guard identifying
3 the problem and trying to make sure that certain
4 SOLAS regulations are going to be enforced? Isn't
5 this --

6 MS. DeLAPPE: Object to the foundation.

7 BY MR. HAGLUND:

8 Q. -- a new development?

9 MS. DeLAPPE: Objection to foundation.

10 MR. HAGLUND: This is an admitted -- this is
11 in the record. There's no foundation issue.

12 MS. DeLAPPE: There's no evidence in the
13 record that Captain Moore knows anything about this
14 exhibit.

15 JUDGE HOWARD: Let's first establish the
16 witness's awareness of this exhibit and this issue.

17 THE WITNESS: I'm kind of --

18 MS. DeLAPPE: Wait for a question.

19 BY MR. HAGLUND:

20 Q. Do you have any familiarity -- do you have any
21 familiarity with this issue?

22 A. I've heard there's an issue in the Columbia River. I
23 don't know anything about a vessel coming in here
24 with this situation.

25 Q. Okay.

1 A. I'm not aware of that.

2 Q. Okay. I'll move on.

3 I want to ask you some questions about PSP's
4 workload and efficiency improvements. As you heard
5 from Captain Carl -- did you observe Captain
6 Carlson's testimony yesterday?

7 A. I did not.

8 Q. Okay. Then I'll represent to you that -- and it's
9 also in his written testimony. But Captain Carlson,
10 in his rebuttal testimony, presents data showing that
11 the option by the PSP of the seven different
12 efficiency measures that it implemented over a period
13 of a year and a quarter, 2021 and the first quarter
14 of 2022, improved PSP's on-watch efficiency by an
15 average of approximately 6 percent from 122.3
16 assignments to 128.9 assignments.

17 Do you have any reason to question that
18 improvement in efficiency, comparing 2019 to 2022,
19 years with similar levels of traffic?

20 MS. DeLAPPE: I would object that 2022 is
21 outside the scope of anything in Captain Morris's
22 testimony, I believe, as 2021 was the test year.

23 MR. HAGLUND: He takes major shots at the
24 efficiency and management of PSP. Whether we're
25 using 2022 data that wasn't in his direct should not

1 matter to my cross.

2 JUDGE HOWARD: I will allow that question.

3 THE WITNESS: It's fair to say that we're
4 having a discussion about efficiency. I know that
5 measure. There are other measures, and we'll
6 continue to have that discussion, I'm sure, at the
7 Board of Pilot Commission. I've submitted many
8 letters and data as well. But I am familiar with his
9 metric there, the one you just mentioned. I think
10 I've seen those numbers, 122 and 128.

11 BY MR. HAGLUND:

12 Q. And you have no reason to dispute their accuracy, do
13 you?

14 A. I think there's other elements to that that ought to
15 be considered. But those specific metrics are what
16 they are. But there are other elements associated
17 with it.

18 Q. Okay. Thank you. Now, this is a series of yes-or-no
19 questions.

20 Would you acknowledge that the operating rule
21 change to allow on-watch pilots to be dispatched to
22 an assignment following a meeting, provided both can
23 be accomplished within 13 hours, improve the on-watch
24 efficiency of PSP?

25 A. Yes. I'm familiar with that. I've heard of that --

1 Q. Okay.

2 A. -- Board of Pilotage Commission. I think he's
3 articulated that.

4 Q. Okay. Would you acknowledge that the rule enabling
5 the combination of an assignment and a repositioning
6 from Port Angeles to Seattle improved PSP's on-watch
7 efficiency, as well?

8 A. I don't have the data to understand the construct.
9 That makes sense. I don't have the data in front of
10 me.

11 Q. Okay. But it -- if you could --

12 A. Combine something -- if you can combine something.

13 Q. Yeah. It's -- these should be easy yeses.

14 A. Yes.

15 Q. So let me continue.

16 Would you acknowledge that allowing a pilot to be
17 immediately dispatched following a cancellation,
18 provided this can be accomplished within the 13-hour
19 work/rest period allowed, also improved on-watch
20 efficiency?

21 A. Yes. If you can --

22 Q. Okay.

23 A. -- tell me what the baseline is. You're asking me to
24 say it improved. But from when -- six years ago?

25 Five years ago? Three? You've got to have a

1 baseline.

2 Q. Well, no. These are -- I'm only going through some
3 of the efficiency measures that were adopted in 2021
4 and the first quarter of 2022. You heard about all
5 their implementation at the monthly BPC meetings.
6 I'm only asking you to acknowledge that those
7 changes, in that time frame, enabled PSP to do more
8 assignments per month by virtue of these efficiency
9 rule measures. It's a very simple set of questions.

10 The next one is: Would you acknowledge that the
11 rule change allowing both a transit assignment and a
12 harbor shift to be performed by a pilot, provided
13 both could be accomplished within the 13-hour time
14 frame, improved on-watch efficiency at PSP?

15 It's another common sense "yes," isn't it?

16 A. Yes.

17 Q. Okay. I won't go through the others. I will move to
18 some other questions.

19 In your testimony you claim that the -- that
20 Dr. Czeisler's testimony in which he concludes that
21 callback levels in excess of five percent of total
22 assignments per month, or year, is unsafe -- his
23 conclusion that that's an unsafe set of conditions
24 for PSP. You say in your testimony that his opinion
25 on this topic is, quote, "largely irrelevant."

1 Now, isn't it true, Captain Moore, that you have
2 been an advocate of safety rules of all kinds
3 throughout your career?

4 A. Yes. That's true. And I've helped develop them as
5 well.

6 Q. And isn't it true that you stated in the last rate
7 case, in testimony, that you believed strongly in the
8 importance of adequate work/rest rules in a
9 transportation critical position like pilots, where
10 vigilance is necessary in executing that job on the
11 bridge of a ship?

12 A. Absolutely.

13 Q. Okay. And when -- wouldn't you agree, then, that the
14 Commission must take into consideration in making
15 certain decisions in this rate case the importance of
16 moving callbacks down to the five percent level or
17 below?

18 A. Could you just say that again? Do I think it's
19 important? What did you ask?

20 Q. Well, let me -- let me give you a little bit of
21 background first.

22 Did you observe in reading the testimony of -- of
23 business manager for the San Francisco Bar Pilots,
24 Captain Anne McIntyre; Columbia River Pilot
25 president, Captain Neilson; and Columbia River Bar

1 Pilot administrative pilot, Captain Dan Jordan, that
2 all three of those groups have callback levels
3 substantially below five percent?

4 Did you observe that?

5 A. I did observe that, yes.

6 Q. And did you observe in the exhibit filed with
7 Captain Carlson's rebuttal testimony that the B.C.
8 Coast Pilots are under three percent for callbacks?

9 A. I -- I did call up there to check on that. And
10 they -- they -- they sent me the data.

11 Q. Okay.

12 A. Which also includes that 60 percent of them are on
13 watch every day. So there are other factors here
14 that we are in discussion with BPC about.

15 Q. So my question for you, Captain Moore, don't you --
16 given your commitment over years to appropriate
17 work/rest rules in a transportation critical position
18 like pilot, that the UTC must take into appropriate
19 consideration Dr. Czeisler's opinions on the risk
20 posed by excessive levels of callbacks?

21 A. I think there are other factors besides that. I do
22 strongly support work/rest rules that make sense and
23 to minimize fatigue-caused accidents. And we haven't
24 had one here in the entire history I've been here,
25 which is great. And we're improving those rules,

1 starting in 2015, which is great. That's a safety --
2 it's a safety enhancement, a continuous improvement.
3 But it also goes hand in glove with being available
4 when you're on duty. And that is one of our main
5 concerns.

6 Q. But, Captain Moore, isn't it true -- I want an answer
7 to my question.

8 A. Okay.

9 Q. Do you acknowledge that the UTC should consider
10 Dr. Czeisler's opinions on the issue of callbacks?

11 A. I think the Board of Pilotage Commissioners, I like
12 the bifurcation where they handle safety and
13 licensing and rest rules and the Commission sets fair
14 and reasonable rates. And obviously, if the Board of
15 Pilotage Commission does A, B, and C that has
16 relevancy to the UTC, that UTC would pay attention to
17 that. But I don't think UTC should be the expert on
18 whether Dr. Czeisler is the end all, be all on pilot
19 safety and bridge and on-watch availability and all
20 those kind of things that get involved in this or
21 not. I think it's the Board of Pilotage Commission
22 as the safety lead in the bifurcation of duties.

23 Q. Okay. Captain Moore, we're not asking the UTC to go
24 beyond its jurisdiction. But let me give you the
25 main example where I think there is an intersection

1 between Dr. Czeisler's testimony and what the UTC
2 should give consideration to.

3 In order for the BPC to deal appropriately with
4 the excessive callback level, it may be necessary to
5 increase the number of authorized pilots above the
6 currently authorized 56 FTE.

7 And in -- if that is ultimately the decision of
8 the BPC months down the road, and PSP has only been
9 funded for 56 pilots, it will require another rate
10 case for the funding of the additional pilots to
11 occur.

12 Wouldn't you agree that the UTC should give
13 serious consideration to an automatic adjustor that
14 increases the tariff for new licensees, decreases it
15 for retirees, so as to create a mechanism that
16 enables the BPC to carry out its number of pilots
17 function setting process without having to have PSP
18 run back to the UTC for another rate case on that
19 particular issue?

20 Why not reduce the number of times we have to be
21 doing battle like this, Captain Moore?

22 A. Well, if you want me to comment, that was a pretty
23 long comment. So I can comment on it. UTC's
24 approach uses an average assignment level, which is
25 for rate setting purposes. And shifting and -- doing

1 an automatic adjustor would just shift a lot of the
2 rate case burden back to BPC. Because every number
3 of pilots decision, every retirement, every licensing
4 decision then becomes a rate case there.

5 And so the average assignment level is a
6 formulaic deal. There are incentives built in there.
7 It's articulated in Staff comments at the last
8 hearing, UTC Staff comments. And so it's not meant
9 to set the number of pilots, but they used an
10 average the UTC Staff and the Commission adopted, an
11 average assignment level for the purposes of rate
12 setting.

13 I -- I assume that if it changes drastically,
14 there will be some revisiting from the -- you know,
15 from you guys on going back to the UTC. We'll see
16 what happens here, over at the BPC when we get a look
17 at all the data, like how many pilots are actually on
18 watch. And we found as few as 11 out of 50 on watch.
19 So we have concerns. We'll see how it plays out at
20 the BPC. But I think that really ought to reside
21 with them.

22 Q. Okay. Let's turn to a topic you just raised, and
23 that's the level of work of the PSP pilots.

24 Now, there are places in your testimony where you
25 suggest that the Puget Sound Pilots are not adhering

1 to the maritime work tradition of equal amounts of
2 time on and time off.

3 And let me -- I want to ask a series of questions
4 regarding that.

5 Number one, you do acknowledge -- and I want to
6 see if you will confirm it here in your oral
7 testimony -- that a PSP pilot works -- is on duty
8 177.65 days each year. You acknowledge that in your
9 testimony.

10 Do you stand by it?

11 A. I stand by the math analysis of the schedule they
12 gave us producing 177.65. And I believe I
13 incorporated their watch schedule in as one of my
14 exhibits so you can take a look at that.

15 Q. And on top of that 177.65 days -- this testimony is
16 in the record, but I want to see if you will
17 acknowledge it -- there is an additional three days
18 of peak period work during cruise season using the
19 acronym PPW, which increases that 177.65 to 180.65.

20 Do you agree with that math and that fact?

21 A. If that happens, I agree with the math. It did
22 not -- it wasn't in the watch schedule we asked for
23 in the DR. And so it wasn't part of the math
24 analysis. But if there is another document that
25 says, yes, we threw another three days of duties in

1 there separate from the watch schedule they gave,
2 then you would add that on.

3 Q. That, Captain Moore, is actually in the operating
4 rules. The PPW obligation is right there in the
5 operating rules, which you had as part of this
6 discovery in the case.

7 But let me move to the additional elements or
8 components of the average PSP pilots annual work
9 schedule.

10 First, as you know, the pilots have a policy that
11 50 percent of the training that is done each year
12 must occur during a pilot's off-watch cycles.

13 And the average for 2022 was five point something
14 days of training time by -- spread -- that's the
15 average per pilot. That gets you to 185.6 or 8 days.

16 And then the other two components are -- there's
17 also a policy to try to schedule pilots around
18 meetings, where half of those meetings are occurring
19 off watch. And you're readily aware, are you not,
20 that they report how many off-watch meetings occurred
21 and training cycles occurred at every BPC meeting;
22 right?

23 A. In recent times they've been listing that. They have
24 not listed how many pilots are on watch and actually
25 available, which has been our request. But they do

1 list meetings, off-watch and on-watch, over the last,
2 I don't know, year and a half or so. Two years.

3 Q. And in 2022, the average number of meeting days
4 performed per pilot off watch, was five, which gets
5 you to above 190.

6 And then the last component is the -- how many
7 callbacks did you work, net of comp days taken. And
8 that's another six days per pilot?

9 So if those numbers are all correct, wouldn't you
10 agree, Captain Moore, that the Puget Sound Pilots are
11 working at a level that is in excess of equal amounts
12 of time on, time off?

13 A. I think we're commingling meetings and training with
14 on-duty and available for assignment.

15 If you do 133 assignments and you're on duty 177
16 or 180.65 days, that needs to be a consideration.

17 Our concern is how many pilots that are scheduled
18 for watch are actually available for assignment. And
19 we strongly believe that it's far less than half of
20 the pilots available every day, which is something
21 that they have put forward -- PSP has put forward,
22 that they have half the pilots available. If they
23 had actually had half the pilots available for
24 assignment every day, we wouldn't be seeing all these
25 callbacks. And that's just an issue we're going to

1 have to play out at BPC.

2 Q. Okay. But we're in the middle of a rate case that's
3 headed for a briefing and decision in the very near
4 future.

5 A. Okay.

6 Q. Let's put up IC-13.

7 A. Okay.

8 Q. This is the kind of data that PSP has submitted in
9 this case. And this covers four years: 2019, 2020,
10 2021 and 2022.

11 And you see a very robust granular set of data
12 that enables one to derive relevant averages very
13 precisely. And this is the exhibit that documents
14 the increase in on-watch productivity.

15 If you go up to the top for 2019, that's actually
16 the first line. And in 2019, the average on-watch
17 productivity per PSP pilot -- so this is during their
18 on watch, 15 days on, 13 days off duty cycles, and
19 then we see a figure for the year of 122.28?

20 And we also see the assignments per month right
21 below the first line. We see the callback jobs per
22 month that represent a very substantial -- represent
23 19 -- for 2019, they were almost 20 percent of all
24 jobs were performed by pilots during their off-watch
25 cycles.

1 And then if we move down to 2022, just this last
2 year, when the bulk of the efficiency measures were
3 in place by the end of the year, but one of the most
4 significant ones, the rolling start, implemented at
5 the end of March -- so it's got a partial year effect
6 here, we see a 6 -- roughly 6 percent increase in
7 that average on-watch assignment per pilot. And we
8 see a reduction in the level of callback jobs from
9 the nearly 20 percent to nearly 17 percent. But it's
10 still far higher than any other pilot group on the
11 West Coast and well above the five percent strongly
12 recommended as a safety parameter or limit that
13 Dr. Czeisler recommends.

14 Now, you acknowledged earlier in your testimony
15 that this demonstrated that you have no reason to
16 question this increase in efficiency based upon the
17 data displayed in this table.

18 And I want to ask you this. You have said, in
19 your most recent comments, that -- that there's all
20 this other stuff that needs to be looked at by the
21 BPC, and you don't think that pilots are as -- are as
22 available as they need to be on watch. But here is
23 my question, Captain Moore.

24 PMSA has submitted no data in this case to
25 explain and document its position that PSP, as an

1 organization, is poorly managed and inefficient;
2 correct?

3 Can you point us to the data that supports your
4 contentions.

5 A. So, yes, I can. The data comes from the pilots. It
6 is -- it is submitted to the Board of Pilotage
7 Commission. The Board of Pilot Commission staff puts
8 together reports, in addition to activity reports
9 that I see that the pilots turn in. The biggest
10 thing lacking is the number of pilots on watch and
11 available. It isn't 25, it isn't 26, it isn't 27.
12 It doesn't work.

13 In February of this year, just a couple months
14 ago, they averaged 8.6 assignments per pilot. And if
15 you take a look at how many pilots there are, 53, you
16 would think with 53 pilots you could handle 8.6
17 assignments per pilot, per month, and not have all
18 the delays. And so the evidence we provided -- I
19 have a chart that shows what happened to delays as we
20 moved through 2021. And you'll see, before 2021,
21 there are an average of 2.98 delays a month at a
22 handful of hours, five or six hours. At that point,
23 about the same time things were changing at PSP, we
24 see this big increase in delays. And we're trying to
25 understand why. And we believe part of that reason,

1 part of that answer is a number of pilots on watch,
2 scheduled to be on watch and available.

3 The watch schedule they provided shows some days
4 they have 35 scheduled for watch, and some days they
5 have 25 because they overlap on change days. We also
6 believe it's less than that. And we've noticed, even
7 in the documents that Dr. Czeisler is involved with
8 in the fatigue study, they had two days where they
9 only had 11 pilots on watch and available. We think
10 that's inefficient, when you have over 50 pilots and
11 only have 11 -- as little and as few as 11 on watch
12 and available for assignment.

13 So that's -- that's really the main efficiency
14 issue we have. All of this data is very helpful in
15 painting a picture. We think that is a core, key
16 metric, a key performance indicator is how many
17 pilots you have actually on watch and available. And
18 that gets into the watch standing and the overlapping
19 on the -- on does it really take 24 hours to go from
20 -- to overlap a watch. Can you do that in less time.
21 Can you make more pilots that are on watch, not the
22 off-watch, on watch available for assignment.

23 And that can drastically, in our view, reduce
24 delays and callbacks. And that's why we put that
25 table in there to show what happened with delays

1 here. Why can't we get a complete answer on the
2 question about how many pilots do you have available
3 when you have more pilots supposedly on watch than
4 you have assignments in a day? February had 16
5 assignments a day on average. You have 52 pilots and
6 we have all these delays.

7 So it doesn't make sense to us. And hopefully we
8 can get to an answer about that one.

9 Q. But Captain Moore, I have just a couple questions on
10 this remaining topic.

11 One is you -- PMSA -- you have a lot of talk
12 here. But PMSA has not put into the record any sort
13 of detailed report supported by detailed data
14 covering even one calendar year to back up the
15 statements you have just made.

16 There's no such exhibit in your record, is there?

17 A. There is. The delay chart is in my record. Give me
18 a second and we'll find the page, and I'll point you
19 to it.

20 Q. While she's looking for it, we'll return when -- I'm
21 running out of time shortly.

22 The second -- the other question is this.

23 With the number of on-duty days, with the PPW
24 three days at 180.65, plus the days of training
25 off-watch, callbacks off-watch, and meetings

1 off-watch, getting PSP pilots to approximately 190
2 days per year, that is over half of the year, is it
3 not?

4 A. 190 is more than -- yeah. There it is.

5 Q. Okay.

6 A. Okay. Page 68, and I'll answer your question. Yes,
7 190 is more than half the year. Again, we're
8 commingling on watch available for assignment with
9 meetings and so on.

10 Q. You have --

11 A. By the way, we acknowledge training, training,
12 training. Absolutely. But we also acknowledge
13 there's a lot of days you're on watch, you're not
14 moving -- you're not -- you're not conducting an
15 assignment.

16 Q. Well, in --

17 A. That's -- that's logical. That makes sense.

18 Q. Well, that happens when a pilot has three nighttime
19 assignments in a row.

20 A. Yes.

21 Q. And the statute and the regulation require that they
22 have 24 hours off because of the incredibly
23 challenging type of schedule that a maritime pilot in
24 this part of the world has, where over 50 percent of
25 the assignments are at night. They're taken in

1 rotation. And they're highly unpredictable as to
2 start and stop times. That's just a feature of the
3 system, isn't it, that there will be days when they
4 don't have an assignment?

5 THE WITNESS: Yeah --

6 JUDGE HOWARD: I'm going to jump in. I'm
7 not sure -- it is unclear to me what is the exact
8 question following that. And there was -- there were
9 some factual statements and then there was a question
10 about the relationship between them.

11 Could you -- you need to break it down. I'm --

12 MR. HAGLUND: Okay.

13 JUDGE HOWARD: I'm not saying that in
14 response to a lot of the characterizations of this
15 Table IC-13, I believe it was. I think it's a common
16 sense statement for me to observe that
17 characterizations by counsel during the hearing are
18 not evidence for the Commission to rely on later. So
19 I'm not necessarily saying that every time. But I
20 did want to say it just now because that question was
21 unclear to me.

22 MR. HAGLUND: Okay. Thank you, Your Honor.

23 BY MR. HAGLUND:

24 Q. So what page did you say the delay --

25 A. 68.

1 Q. So MM --

2 A. Figure E in MM-1T.

3 Q. We're getting that MM-1T, page 68. Can you get
4 the -- just show the figure, blow it up for me.

5 Now, Captain Moore, isn't it true that the new
6 rest rules required by the -- their enactment into
7 statute came into place on March 19th, in the middle
8 of this graph?

9 MS. DeLAPPE: Objection. Vague as to year.
10 Oh, March 2019. Okay. Thank you. Sorry. I was
11 wrong.

12 MR. HAGLUND: Actually, I think it was
13 January 2019. I think I misspoke.

14 THE WITNESS: I think I get your --

15 BY MR. HAGLUND:

16 Q. Isn't it true that the rest rules changed by statute
17 in January of 2019?

18 A. So I've looked at this pretty carefully. 2015, 2018,
19 November 2018. PSP policy going to eight hours rest,
20 then going to ten hours rest, then having statutes.
21 So I think it's important to understand the
22 difference between the statute, the RCW, the WAC, a
23 PSP policy, and a BPC policy. And you look at the
24 actual implementation dates. And there's a number of
25 them, the 13 hours, the three-and-out rule in 2015,

1 going to ten hours rest, et cetera.

2 So if you're just asking about the RCW, I'm not
3 going to say it wasn't important, because it codified
4 what was going on. But the real implementation dates
5 would be instructive, the 2015 and 2018 and so on,
6 when they actually implemented the policies of ten
7 hours of rest following an assignment or 13 hours
8 total max, started defining what an assignment was.
9 And three-and-out rule was in 2015, as I recall.

10 So I don't know if you're just asking about the
11 RCW only, or when it actually was implemented.

12 Q. I was -- wasn't there also, an addition -- in January
13 of '19, an addition to the rest rule going from eight
14 to ten hours?

15 There was also the 13-hour maximum work period
16 for multiple assignments. That also reduced pilot
17 availability, did it not?

18 A. Yes. I just am not clear if you're talking about the
19 policy when it was implemented or the RCW action --
20 RCW -- or the WAC action by rule making. But all of
21 those things, from 2015 to 2019, were implemented.
22 And it's instructive to look at the dates of
23 implementation. That's why we produced this chart to
24 try and figure out what's going on.

25 Q. Right. But you produced this chart, you've sent it

1 to BPC, you've discussed it with the BPC, but it's
2 not -- the -- the history you just related, the data
3 that would enable one to analyze what moved when/why,
4 hasn't been submitted by PMSA in the record of this
5 case, has it?

6 A. We don't have that -- by the way, I'm sorry. I gave
7 you the wrong figure. Figure E. It's Figure G, two
8 pages later. And after all these rest issues were --
9 rest rules were put in place or rest policies were
10 put in place, you can still see the spike in all of
11 the delays in '21 and '22.

12 So if you go to Figure G on page 70 -- and we're
13 just taking -- just to be clear, we're taking that
14 data from the PSP activity reports. We don't have
15 this data. We're just taking what was submitted --
16 there you go.

17 We're just taking what was submitted by PSP to
18 the BPC. And really, for the record, we're not
19 recommending that PSP have to submit all sorts of
20 extraneous data to the BPC. We -- I'm on record
21 several times asking for key performance indicators
22 on efficiency and to land on them. And if they're
23 key performance indicators, what frequency they
24 should be reported in, monthly or annually or what
25 have you, so that the BPC can make an informed

1 decision about number of pilots. That's been our
2 continuing recommendation.

3 And so all we're doing is taking data that's
4 already there and expressing our concern. We look at
5 this and say, why is this happening? When you have
6 efficiency measures that went in place, it got worse.
7 It doesn't make sense to us. That's why we're asking
8 the question.

9 Q. Well, and you don't -- this graph doesn't take into
10 account some of the traffic, some of the supply chain
11 issues, and more container ships than could be
12 accommodated, not only in LA Long Beach, but also in
13 Puget Sound, and multiple delays in container ships
14 having to wait days for berths, and increasing the
15 number of anchorage and other moves made by that
16 category.

17 There's more to this picture, wouldn't you agree?

18 A. I'm very familiar with the anchorage. I've been
19 managing the anchorages with our members all the way
20 to China. So I'm very familiar with what you're
21 talking about there. It still comes under the
22 category of assignments. And either you have an
23 arrival or departure or you have a shift. So this is
24 within the context of looking at how many
25 assignments, how many ship arrivals, how many ship

1 departures, how many shifts. And those are on the
2 pilot activity reports in conjunction with the marine
3 exchange, which provides monthly data on ship
4 arrivals in the mix. Very aware of the anchorage
5 issue.

6 So, yes, you are absolutely right. I completely
7 agree. All assignments and the type of assignments
8 needs to be considered here, and we have done that.
9 And, again, in February, the lowest number of
10 assignments I've seen in the 20 years I've been
11 looking at assignments here, and still we have
12 delays. And we've had so many months in the past
13 where there's zero delays.

14 And so we just don't understand, if you're adding
15 efficiencies in and doing all these things, then why
16 would you have the lowest month assignment level ever
17 and still have an issue? So we're just asking
18 legitimate questions, and hopefully we'll get to key
19 performance indicators and make some progress on
20 that.

21 Q. Okay. So a couple more questions on this topic.

22 One, the part of '21 that you're speaking to also
23 was affected by COVID. That hit a number of Puget
24 Sound pilots; correct?

25 A. Yes. And there -- we asked -- okay. Just to answer

1 the question, yes, we didn't know the number. I did
2 talk to BPC about that when it was reported seven or
3 eight had COVID, was it all in the same time, was it
4 spaced out, how many are not fit for duty.

5 Q. Okay.

6 A. It seems to me not fit for duty for COVID or not fit
7 for duty for other reasons is still not fit for duty,
8 and that's what we asked the BPC for.

9 Q. Okay. Okay. So let me -- let me make sure that the
10 Commissioners can understand this part of the case in
11 a proper context.

12 You're in agreement with PSP that how work/rest
13 rules should be developed, how many pilots should be
14 authorized to be licensed, is a matter for the BPC;
15 right?

16 A. It is.

17 Q. Both of them.

18 And the -- what I heard you say this afternoon
19 were two items that are highly relevant, I think, to
20 the UTC. One is that the efficiency measures that
21 PSP adopted in response to Order 09 have yielded,
22 based on the data presented, a significance increase
23 in on-watch efficiency.

24 And you acknowledged that earlier this afternoon;
25 right?

1 A. I just didn't acknowledge from what baseline. And so
2 by -- by themselves, as you described them, it should
3 increase efficiency. But when we compare baselines,
4 we have concerns. And that's probably the
5 difference.

6 Q. Okay. And then secondly, assuming the data that was
7 presented to you in the questions where the average
8 PSP pilot is working approximately 190 days of the
9 year, there is no issue with the level of their work
10 effort, given the maritime tradition of equal amounts
11 of time on and time off.

12 Would you agree with that?

13 A. I would say that you have to define work. On duty,
14 on watch, available, actually conducting assignment,
15 actually piloting, training and manned-model
16 training, those are different things, I think. And
17 so on duty, we would love it if half of the pilot
18 corps was actually on duty and available for watch
19 every day. I think that would be a big step in the
20 direction of safe, reliable, timely service.

21 Q. But let's take a firefighter.

22 Do you consider them not on duty and at work on a
23 day when they put out no fires and spend the day at
24 the fire station?

25 A. If they're at the pilot station, they're on duty. If

1 they're putting out a fire, they're putting out a
2 fire. If they're training, they're training.

3 Q. And with PSP pilots, with a schedule where they've
4 got to be able to react quickly to an unpredictable
5 schedule when they're on duty for their 15 days,
6 they're at work on duty, are they not?

7 A. They're on duty and on call. I've been at golf
8 tournaments where they're on call and ready to get
9 called, and they'll go do their assignment.

10 Honestly, it's just the way it is. That's just
11 part of the function of being a pilot in this watch
12 system. If you're on duty, you've got to be
13 available and rested and safe and be ready to go.

14 I think that's a little bit different than how
15 many assignments you're performing. I do see when
16 you have only 30 -- 25 on watch and not all of them
17 are actually available for assignment, that that's a
18 problem. The whole watch schedule shows up to 35 and
19 as low as 25. And that's just scheduled for watch.
20 It doesn't show how many are actually available. We
21 believe it's a lot less than that.

22 Q. Okay.

23 A. Happy to be proven wrong. But we don't think that's
24 the case. So therefore there's opportunities for
25 improvement is all we're saying.

1 Q. Okay. And ultimately, there has been a -- so the UTC
2 is completely up to date on how this topic is being
3 addressed by the Board of Pilotage Commissioners.
4 There was a very recent meeting that you attended
5 just last month where the -- both the pilots and
6 other stakeholders along with the BPC are working on
7 developing key metrics or key performance indicators,
8 KPIs, and there will be a continuing dialogue on
9 these topics.

10 But would you agree that the BPC is pursuing,
11 appropriately, the differing points of view that
12 exist with respect to these -- some of these
13 work/rest and on-duty versus off-duty issues that
14 have developed?

15 A. I am pleased they're taking it up. And I acknowledge
16 that after a long, long time of monthly submission
17 recommending they take up key performance indicators
18 for efficiency, that they have finally done that.
19 And I know that Chair Kahn has mentioned, we want to
20 get all the data and so forth. So I'm glad we're
21 starting to -- starting to dig into that. If we do
22 it right, I think it will make things easier on
23 reporting and it would lead to some efficiency
24 improvements. Those are the two things I think it
25 will do.

1 MR. HAGLUND: Let me look at my notes, but I
2 think I'm almost at my time limit, Your Honor. Let
3 me just double-check my notes. Actually, one last
4 question.

5 BY MR. HAGLUND:

6 Q. Could you go to MM-1T, page 77?

7 A. Yes.

8 Q. And this is a figure in which you are contending that
9 the average active pilot did only 116 on-duty jobs
10 and 17 callback jobs in 2021, for a total of 133
11 assignments per year.

12 But when one looks at the lower figure where
13 you've got the asterisk, you excluded partial year
14 pilots, pilots who were either retired in the middle
15 of the year, were burning comp days, or were
16 medically unfit for duty. And if those are taken
17 into account, as PSP does in its statistics, the 52
18 that's on that -- in that column for number of pilots
19 just below the 55 should actually be 48.14. And the
20 on-duty jobs then goes to 125.91, not the 116 that
21 you contend occurred in 2021.

22 And one can look at IC-13, the exhibit we were
23 just looking at previously, to document what the full
24 year really looked like if you properly accounted for
25 the partial-year pilots in those different

1 categories.

2 Would you acknowledge that if what I've related
3 is accurate, that the numbers should change in this
4 figure of yours, Figure I?

5 A. I think our asterisk is accurate. I am really glad
6 you brought this up. I think we have a lot of data
7 that swirls around, not including the president or
8 including the president, and then not taking into
9 account not fit for duty. And then this other
10 category of when a pilot keeps their license and
11 burns comp days versus turns in their license and
12 burns comp days. I'm glad you brought this up.

13 I would like to think we can all just do it the
14 same way every time so there's not an apple and an
15 orange issue there, for sure. So I'm happy to go
16 either way, right? I mean, as long as it's done the
17 same way, you don't include the president not doing
18 assignments and you totally account for not fit for
19 duty and those keeping their license but really
20 retired, not going to ever pilot again, versus those
21 that turn in a license and burn. So we ought to be
22 consistent with that. I acknowledge that. It would
23 be great to have a consistent protocol there.

24 Q. Okay. All I can say is the president isn't accounted
25 for. That's right out of the BPC annual reports as

1 the president --

2 A. For sure. We see data all the time that has him in
3 or has him not in. It would be great to be
4 consistent is all.

5 Q. Okay.

6 A. I apologize to the reporter again. I'm going a
7 little fast there.

8 MR. HAGLUND: Okay. That concludes my
9 cross-examination, Your Honor.

10 JUDGE HOWARD: All right. Thank you.

11 Before we jump into redirect, I -- I am
12 informed that Commissioner Rendahl does need to sign
13 off at 5:40. And she will, of course, review the
14 record, the transcript following this.

15 So is everyone fine to continue for the moment
16 with the redirect?

17 MR. HAGLUND: Yes, Your Honor.

18 MS. DeLAPPE: Certainly. The only question
19 I have is if Your Honor would like to have
20 Commissioner Rendahl ask any questions she might have
21 of Captain Moore while she's here.

22 JUDGE HOWARD: That is -- that is a fair
23 point.

24 COMMISSIONER RENDAHL: I appreciate that. I
25 do not have questions. It's been a very complete

1 testimony.

2 THE WITNESS: I appreciate that.

3 MS. DeLAPPE: Thank you. I'll proceed,
4 then, with Your Honor's permission. I have just a
5 few --

6 JUDGE HOWARD: Please go ahead.

7 MS. DeLAPPE: I think I can be brief since I
8 know we all want to wrap up.

9 REDIRECT EXAMINATION

10 BY MS. DeLAPPE:

11 Q. Captain Moore, on the figure that you were just
12 talking about, Figure I, just wanted to confirm, you
13 did not exclude all part-time pilots, just pilots
14 with zero job and using comp days?

15 A. Yes. Exactly what the asterisk says.

16 Q. Great. If we can turn, then, to your testimony at
17 page 190. And you remember that Mr. Haglund was
18 asking you about a series of bullet points that were
19 comparability factors that were concerns?

20 A. Yes. I remember that.

21 Q. Who was -- who originated -- what was the source
22 for -- in your testimony, for that list?

23 A. Those came from UTC Staff, last time.

24 Q. Okay. Thank you.

25 And is there -- you were asked whether there were

1 any -- if there's any way that we can get all of
2 those comparability data, all of that data, from any
3 place.

4 Is there a pilotage ground that could meet those
5 data standards?

6 A. The Puget Sound Pilotage ground meets those
7 standards.

8 Q. Thank you. And you were also asked about Exhibit
9 MM-102X, which was the New York Times article about
10 the U.S. Coast Guard with their treacherous classroom
11 in Washington.

12 Is that area -- does it present conditions like
13 Puget Sound?

14 A. No, it does not.

15 Q. And what do you mean by that?

16 A. Well, it's a confluence of issues. You have river
17 runoff meeting swells and different kind of wind and
18 wind conditions. And it can -- it can lead to what
19 they call steep waves. So you have a very deep
20 trough and the waves are close together and it's
21 very, very treacherous for, say, a fishing vessel or
22 even these Coast Guard rescue personnel right here in
23 that picture. It's very treacherous and it's --
24 that's why it gets labeled a number of different
25 ways. But it's a treacherous, dangerous area,

1 particularly in those kind of conditions.

2 Q. And that's different from the Puget Sound?

3 A. That's different from Puget Sound and -- absolutely
4 different from Puget Sound. I think one of the great
5 blessings we have is that Puget Sound is wide, deep,
6 and fairly well protected. And that's a very good
7 thing. We ought to have pilotage and great VTS and
8 great Coast Guard to keep it safe.

9 Q. Mr. Haglund asked you a series of questions about
10 efficiency measures.

11 Do you remember that?

12 A. I do.

13 Q. And I just wanted to clarify, were you -- was it your
14 testimony that those measures have improved
15 efficiency of the Puget Sound Pilots or that they
16 could improve?

17 A. In total, we're not seeing efficiency gains.
18 Individually, as Mr. Haglund asked me the questions,
19 would each of those individual things improve
20 efficiency? Logically, they would. But the whole
21 picture requires taking a look at a time frame and
22 what the actual results are. So the desired outcome
23 is to have more efficient pilotage with pilots doing
24 assignments as much as possible on-watch, safely,
25 while rested. And that's the thing we're pushing

1 with the BPC to try to get at that.

2 Q. And just one last question then. You were also asked
3 whether you were serious in suggesting that a vote by
4 the pilots could result in a change in the retirement
5 plan at PSP.

6 A. That's my understanding is it's --

7 Q. Wait for my question.

8 A. Okay. I'm waiting.

9 Q. Captain Moore, are there any examples that you know
10 of any pilotage groups making a change like that to
11 their retirement plan by vote?

12 A. You mean another pilotage group besides Puget Sound?

13 Q. Correct.

14 A. I'm not aware of that.

15 Q. Are you aware at all of any vote like that by the
16 Columbia River Pilots to change their retirement
17 plan?

18 A. I really don't know what they -- I'm not aware of it.

19 Q. Okay.

20 A. I don't know.

21 MS. DeLAPPE: Thank you. No further
22 questions.

23 JUDGE HOWARD: All right. Staff also
24 indicated five minutes of cross for Captain Moore. I
25 think normally I would suggest let's take a break,

1 but if it's five minutes, let's just bite the bullet.
2 Mr. Callaghan.

3 MR. CALLAGHAN: Thank you, Your Honor. I
4 promise I will be brief.

5 CROSS-EXAMINATION

6 BY MR. CALLAGHAN:

7 Q. Good evening, Captain Moore.

8 A. Good evening.

9 Q. Do you have a copy of your cross answering testimony
10 with you?

11 A. I do.

12 Q. Could you turn to page 3?

13 A. Page 3.

14 Q. Starting on page 3, through a series of Q and As, you
15 say that PMSA agrees with Staff's position that PSP
16 has not adequately supported its request for an
17 increase in rates; is that right?

18 A. That's correct.

19 Q. Now, your cross answering testimony was filed
20 simultaneously with PSP's rebuttal testimony; right?

21 A. I think that's -- I think that's right.

22 Q. Okay.

23 A. I believe so.

24 Q. Okay. So have you had the opportunity to read any of
25 the rebuttal testimony from PSP?

1 A. Yes.

2 Q. Has anything you've read from that testimony changed
3 your opinion?

4 A. No, it has not.

5 Q. Okay. So PMSA's position is still that PSP hasn't
6 adequately supported its request for an increase in
7 rates; correct?

8 A. That's correct.

9 Q. All right. And later on in your cross answering
10 testimony, you discuss the difficulties that PMSA had
11 during the discovery process in this case; is that
12 right?

13 A. Yes. We did mention that.

14 Q. All right. And is it fair to say that that was
15 consistent with Staff's testimony on the same issue?

16 A. Yes. Yes, that is consistent.

17 Q. All right. Is it fair to say that -- is it your
18 opinion that the lack of evidence from PSP was
19 exacerbated by the fact that they did not fully
20 answer data requests from PMSA and Staff?

21 A. I think that does lead to a less than robust record.
22 Yes.

23 Q. All right. So counsel for PSP asked you about
24 whether other pilot groups across the country had a
25 pay-as-you-go pension program.

1 Do you remember that?

2 A. I do remember that.

3 Q. All right. Did you review the Commission's Order 09
4 from the last rate case?

5 A. I most certainly did, yes.

6 Q. Okay. In that order, did the Commission require PSP
7 to make a plan to transition to a fully-funded
8 defined benefit plan?

9 A. Yes, they did.

10 Q. All right. And in Order 09, didn't the Commission
11 agree with Staff's assessment that PSP's
12 pay-as-you-go plan was fiscally unsound and
13 vulnerable to changing economic conditions?

14 A. Yes, I definitely recall that.

15 MR. CALLAGHAN: Okay. No further questions,
16 Your Honor.

17 JUDGE HOWARD: All right. Any redirect?

18 MS. DeLAPPE: No redirect, Your Honor.

19 JUDGE HOWARD: All right. Any questions
20 from the bench for Captain Moore?

21 CHAIR DANNER: No questions. Thank you.

22 COMMISSIONER DOUMIT: No. Thank you, Your
23 Honor.

24 JUDGE HOWARD: All right. Well,
25 Captain Moore, thank you for your testimony. I

1 appreciate your staying late after the normal
2 business hours. And counsel, as well, being flexible
3 and getting this case to continue in a timely manner.

4 THE WITNESS: Thank you. And thank you for
5 accommodating me today instead of tomorrow, as I'm
6 flying out. I really appreciate it.

7 JUDGE HOWARD: Yes. Not a problem. I'll
8 see everyone back online at 9 a.m. tomorrow, and we
9 will finish with the witnesses as we've discussed.
10 We are off the record. Thanks, everyone.


11 (The hearing concluded at
12 5:44 p.m.)
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

STATE OF WASHINGTON
COUNTY OF KITSAP

I, Carisa Kitselman, a Certified Court Reporter in and for the State of Washington, do hereby certify that the foregoing transcript of the videoconference evidentiary hearing, on APRIL 6, 2023, is true and accurate to the best of my knowledge, skill and ability.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 18th day of April, 2023.


CARISA KITSELMAN, RPR, CCR #2018

