

Docket No. TP-220513 - Vol. VI

WUTC v. Puget Sound Pilots

April 7, 2023



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BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMITTEE

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

VIDEOCONFERENCE EVIDENTIARY HEARING - VOLUME VI
Pages 668 - 861
BEFORE ADMINISTRATIVE LAW JUDGE MICHAEL HOWARD

April 7, 2023

9:03 a.m.

(All participants appeared via videoconference.)

REPORTED BY: Nicole A. Bulldis, RPR
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ANN RENDAHL, Commissioner
MILTON DOUMIT, Commissioner

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1 P R O C E E D I N G S

2 Friday, April 7, 2023; 9:03 a.m.

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4

5 JUDGE HOWARD: On the record. It's
6 9:03 a.m., on April 7th -- Friday, April 7th. We're
7 here to continue the evidentiary hearing in
8 Docket TP-220513. We're resuming with PSP's witnesses,
9 and the first witness we'll be calling today is
10 Christopher Wood.

11 Mr. Wood, I see you have your video feed
12 on. Can you see and hear me all right?

13 All right. Great. If you'd please raise
14 your right hand, I'll swear you in.

15 Do you swear or affirm that the testimony
16 you give today is the truth, the whole truth, and
17 nothing but the truth?

18 THE WITNESS: I do.

19 JUDGE HOWARD: Great. Thank you.

20 Mr. Haglund, could you please introduce
21 the witness?

22 MR. HAGLUND: Yes.

23 Mr. Wood, how many years have you worked
24 as an actuary?

25 THE WITNESS: 42.

1 MR. HAGLUND: Did you prepare original
2 and rebuttal testimony in this case?

3 THE WITNESS: Yes, I did.

4 MR. HAGLUND: Is it true and accurate to
5 the best of your knowledge?

6 THE WITNESS: Yes, it is.

7 MR. HAGLUND: I tender the witness for
8 cross.

9 JUDGE HOWARD: All right. Ms. DeLappe,
10 you may proceed.

11 MS. DeLAPPE: Thank you, your Honor.

12

13 CROSS-EXAMINATION

14 BY MS. DeLAPPE

15 Q. And good morning, Mr. Wood.

16 A. Good morning.

17 Q. You -- just as a preliminary matter, in your
18 capacity as a pension actuary, do you read and apply
19 sections of the Internal Revenue Code specific to that
20 work?

21 A. Yes.

22 Q. Okay. And before your work with PSP, have you
23 ever been retained in an actuarial capacity in support
24 of the creation of a defined benefit multiple employer
25 plan?

1 A. I have not.

2 Q. And you have no experience providing actuarial
3 services for the maintenance of a defined benefit
4 multiple employer plan?

5 A. That's true.

6 Q. In your rebuttal testimony, and so that's --
7 you updated your savings estimates of moving away from
8 the current funded plan to a new funded plan; correct?

9 A. Yes.

10 Q. And as a result, your projected plan savings
11 under Alternative 1 are now 124 million, and that's in
12 Exhibit CRW6-T, Page 6, Line 20. Starting there.

13 A. I cited -- I cited 124 million and 100 million
14 with the savings.

15 Q. Also, Alternative 1, your corrected savings
16 are now 124 million?

17 A. Yes.

18 Q. And Alternative 2, it's 100 million in
19 savings?

20 A. Yes.

21 Q. And under your analysis, all these savings are
22 attributable to investment earnings on the larger
23 contributions of pilots in the early years of the plan?

24 A. Yes. The contributions aren't necessarily --
25 well, yeah, there is -- there's a period of time when

1 because of providing past service credit, the larger --
2 or in the first approximately 15 years, yeah, before
3 reaching a steady state, at which, at that point,
4 inflation will inevitably cause it to gradually
5 increase.

6 Q. And so just to confirm, that -- the reason
7 that you have the savings that you referred to in your
8 prior testimony just a moment ago is because of those
9 contributions in the early years of the plan, the
10 investment earnings on those?

11 A. Yes. And it's any -- it's changing the
12 pattern of contributions from the fair buys to one that
13 is more front-loaded would be a way of thinking about it
14 in that that creates an opportunity for investment
15 earnings to offset future costs.

16 Q. So calculating investment returns accurately
17 is crucial to determining the savings; right?

18 A. Yes, I would say so.

19 Q. In your rebuttal testimony -- and now I'm at
20 Page 4, Line 25 and going on to the next page -- you
21 assumed investment returns would match the discount
22 rates being used to determine the plan liabilities;
23 right?

24 A. Yes.

25 Q. And you also testified, quote, "The discount

1 rates mandated by the minimum funding rules are based
2 upon high-quality corporate bond rates in effect as of
3 the valuation date"?

4 A. Yes. Yes, I did.

5 MR. HAGLUND: Speak up a little bit.

6 MS. DeLAPPE: Thank you.

7 Q. (By Ms. DeLappe) Do you agree that the mandated
8 discount rates in effect as of the valuation date are
9 currently based on 25-year averages of high-quality
10 corporate bond rates with fixed minimums applied?

11 A. Yes.

12 Q. And for the investment return to match the
13 discount rate -- now on Page 5 of your rebuttal
14 testimony -- you quote, "Assume that a professionally
15 managed pension trust would be able to earn a rate of
16 return on plan assets at least equal to the rate of
17 return generated by a portfolio of high-quality
18 corporate bonds"; right?

19 A. Yes. Yes, I said that.

20 Q. So, in other words, you are assuming a rate of
21 return for this new funded plan would be based on the
22 returns of investments in this new portfolio of
23 high-quality corporate bonds?

24 A. No. I'm not assuming that the plan invests
25 only in high-quality corporate bonds.

1 Q. Can you explain that, please?

2 A. Sure. The pension plans, in general, invest
3 in a mix of equities and bond instruments. That is done
4 on the basis of analysis and asset consultants who will
5 spend -- spend some time looking at the demographics of
6 the plan and projections of the liabilities in the plan
7 and determine, you know, what would be an appropriate
8 mix of equities and bonds.

9 But it -- I would say it's inevitably, except
10 in very, very unusual circumstances, going to include
11 some mix -- you know, the basic standard that people
12 often refer to is 60/40 equity to bond, but there
13 certainly are ones that are different from that,
14 something more like 50/50 or 40/60.

15 Q. So when we look at the investment returns that
16 will be needed given the mandated discount rates, will
17 they actually need to -- will they need to be more
18 aggressive than just assuming that the investments will
19 naturally return a rate generated by -- they -- you
20 know, what they would if they were generated on a
21 portfolio of current high-quality bonds?

22 A. I'm not sure I would characterize it as
23 needing to be greater so much as, you know, a
24 responsible investment philosophy and approach will
25 produce some mix of investments that, you know, in many

1 cases, even goes outside strictly just equities and
2 bonds in order to maximize, with the new contracts, the
3 risk tolerances for the return on the portfolio.

4 Q. Does any of your testimony address investment
5 return volatility?

6 A. No.

7 Q. If investment earnings are the apparent
8 savings, then could the savings that are earned with any
9 type of funding or contribution plan -- I guess, let me
10 back up and restate this.

11 So if investment earnings are the apparent
12 savings, then could those savings be achieved with any
13 type of funding or contribution plan that is ultimately
14 selected?

15 MR. HAGLUND: Objection. Vague.

16 THE WITNESS: You mean any -- can I --
17 can you clarify? Are you talking about any plan with --

18 JUDGE HOWARD: After there's an
19 objection, I will -- I'll need to rule. Perhaps --
20 perhaps the question could be rephrased slightly.

21 MS. DeLAPPE: Thank you.

22 Q. (By Ms. DeLappe) So, Mr. Wood, earlier, we
23 talked about investment earnings as the basis for the
24 apparent savings. So could those savings be earned with
25 any type of funding or contribution plan that PSP

1 ultimately selects?

2 A. No, if I understand you correctly, and it
3 depends on what you invest in. If they would keep it in
4 cash, they're not going to be able to match that rate of
5 return.

6 Q. And so putting aside -- let's say all things
7 being equal as far as the portfolio that they are
8 investing in, would you agree that the savings from
9 those earnings could be earned regardless of the type of
10 funding or contribution plan that PSP ultimately
11 selects?

12 A. So you're not talking about investment
13 philosophy here, you're talking about the plan?

14 Q. Correct.

15 A. I guess I would say that any approach that
16 results in prefunding.

17 Q. Any plan that results in prefunding?

18 A. Not a plan. It's not the plan that decides
19 the funding. It's the funding policy that the plan
20 sponsor has.

21 Q. I'm trying to fill in the words that are not
22 coming through. There seems to be a problem with the
23 connection.

24 A. Okay.

25 JUDGE HOWARD: I'm wondering if the

1 microphone could be a little bit closer to Mr. Wood or
2 if he needs to raise his voice some? I'm not entirely
3 sure if that's the issue, but that might be the issue.

4 MR. HAGLUND: We're moving it closer to
5 Mr. Wood, your Honor.

6 MR. HOWARD: Thank you.

7 THE WITNESS: Do you want to do your
8 question again?

9 Q. (By Ms. DeLappe) No. If you could just repeat
10 what you were saying. I think you said something about
11 prefunding. Any?

12 A. Any funding policy that results in funding
13 earlier or prefunding more than the pay-as-you-go
14 approach will have an opportunity to produce investment
15 returns that can produce savings.

16 Q. Thank you.

17 Moving now to a separate topic. Your baseline
18 assumptions about the growth of the pilotage core are
19 based -- if we turn to Page 8 of your rebuttal
20 testimony, Line 7, you said they're based on 56 Year 1
21 participants, all active and adding one net additional
22 participant each year; is that correct?

23 A. That was an assumption that was used for
24 purposes of estimating the PBGC premiums.

25 Q. Mm-hmm. And so if you start with 56 pilots

1 and you add one net additional participant each year of
2 your 50-year projection, would your projections end with
3 an assumption of 106 total pilots?

4 A. No, and perhaps my description of the approach
5 was ambiguous. What I was intending to say is that
6 they're -- they're adding one additional participant
7 from the perspective of PBGC counting how many
8 participants you have in the plan and they include
9 retired participants in that count. So what I'm saying
10 is the total count of participants each year, 56 is
11 going to be the actives. That's what we assumed in the
12 projections. But what's happening is that as they
13 retire, the total number of participants covered by the
14 plan will increase until it eventually approaches a
15 steady state.

16 Q. And so are you looking at Page 8 of your
17 testimony? If you could look at Lines 7 and 8.

18 So was that -- and I'll just read it. It
19 says, "PBGC flat-rate premium based on 56 Year 1
20 participants all active and adding one net additional
21 participant each year in a 2023 rate of \$96 per
22 participant that is increased by its affected inflation
23 each year."

24 So you're not growing the pilotage core year
25 over year?

1 A. Correct.

2 Q. It's --

3 A. I'm not adding an active participant. I'm
4 adding a participant. Because in Year 1, you have no
5 retirees from the PBC perspective in this new plan
6 because they're all being paid through the farebox.

7 Do you understand what I'm saying?

8 MS. DeLAPPE: Yes, I think we're -- the
9 Court Reporter's having some issues on the transcript,
10 though. I saw her raise her hand.

11 Did you get everything you needed?

12 THE STENOGRAPHER: I did, but your
13 internet seems to be just a little spotty. I did get
14 it. It came in after, but I just want you guys to be
15 aware that it's happening.

16 MS. DeLAPPE: Thank you.

17 I have no further questions, your Honor.
18 Thank you, Mr. Wood.

19 JUDGE HOWARD: All right. Any redirect?

20 MR. HAGLUND: Yes, your Honor, briefly.

21

22 REDIRECT EXAMINATION

23 BY MR. HAGLUND

24 Q. Mr. Wood, you were asked some questions about
25 the investment earnings that would be the source of the

1 substantial savings by transition in Alternative 1,
2 which has the retirees -- existing retirees paid through
3 the continuation of the pay-as-you-go system, but
4 transitions on all active pilots, including their past
5 service accruals, to the fully funded defined benefit
6 plan.

7 Now, you, in your testimony, note that you
8 used a 5 percent net of investment costs rate of return
9 on the investments that grow in the trust as it is fully
10 funded over 15 years. Could you -- in -- was the --
11 could you describe why you think that was an appropriate
12 and conservative figure to project and use as the
13 assumption for average rate of return on investments in
14 the trust?

15 A. I think in this testimony I clarified that the
16 expectation was that the investments would earn exactly
17 the discount rate that was being used to discount
18 liabilities, which is a combination of three interest
19 rates. I'd have to look, it's something like 4.75. I
20 think we have it here, 4.75, 5 percent, and 5.74. And
21 there's -- you can produce a -- you can calculate a
22 single effective interest rate just for purposes of, you
23 know, being able to have an idea what -- you know, what
24 that comes out to be in some of the demographics of the
25 population. And for over the 50 years, it changes a

1 little bit, but it's somewhere between 5.1 and
2 5.3 percent is the effective interest rate each year
3 that the assets would have to earn.

4 Q. You considered that to be a very conservative
5 projection of the overall average investment returns
6 based upon the history you're aware of to date?

7 A. Well, certainly based upon current market
8 conditions, it's -- it's very conservative. I looked
9 at -- JPMorgan publishes every quarter an expectation of
10 long-term rates of return on 45 different asset
11 categories. And if you look at their most recent
12 projection, they say that equities -- US equities will
13 earn 9.1 percent, and US high-quality corporate bonds
14 were 5.7. So any portfolio that's a combination of
15 those is going to be, you know, earning something in the
16 nature of 6-and-a-half to 7 percent, which is well in
17 excess of what we were assuming.

18 So that was where -- that was one of the
19 datapoints that one could use to conclude that it's not
20 unreasonable to say that that was a -- a conservative
21 estimate of asset returns.

22 Q. Thank you. No further questions.

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

25 CHAIR DANNER: No, your Honor.

1 COMMISSIONER RENDAHL: No, your Honor.

2 COMMISSIONER DOUMIT: No. Thank you,
3 your Honor.

4 JUDGE HOWARD: All right. Mr. Wood,
5 thank you for your testimony. You are excused from the
6 remainder of the hearing.

7 Our next witness, I believe, is
8 Brett Valentine with PSP.

9 MR. HAGLUND: That's right, your Honor.
10 He's coming to the witness chair.

11 JUDGE HOWARD: Okay. Great.

12 All right. Mr. Valentine, if you'd raise
13 your right hand, I'll swear you in.

14 Do you swear or affirm that the testimony
15 you give today is the truth, the whole truth, and
16 nothing but the truth?

17 THE WITNESS: I do, your Honor.

18 JUDGE HOWARD: Great. Thank you.

19 Mr. Haglund, would you please introduce
20 the witness?

21 MR. HAGLUND: Yes, your Honor.

22 Mr. Valentine, how long have you been
23 Puget Sound Pilots' dispatcher?

24 THE WITNESS: 28 years now.

25 MR. HAGLUND: Are you the most senior

1 dispatcher with PSP?

2 THE WITNESS: I am not.

3 MR. HAGLUND: Someone's been there longer
4 than you?

5 THE WITNESS: Yes.

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

8 THE WITNESS: Yes, I did.

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

11 THE WITNESS: I believe so, yes.

12 MR. HAGLUND: Okay. We tender the
13 witness for cross-examination.

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

16 MS. DeLAPPE: Thank you, your Honor.

17

18 CROSS-EXAMINATION

19 BY MS. DeLAPPE

20 Q. And good morning, Mr. Valentine.

21 A. Good morning.

22 Q. So your -- a good portion of your testimony is
23 focused on the challenges that fatigue and rest rules
24 pose to dispatchers at PSP; right?

25 A. That's correct.

1 Q. If a pilot is on duty and they are next in
2 rotation for a pilot job but dispatching them would
3 result in violation of BPC rest rules or in any other
4 unsafe situation, would PSP ever dispatch that pilot to
5 a job?

6 A. If that happened, it's completely
7 unintentional. So I would say no, but no, we wouldn't
8 want to do that.

9 Q. Right. So never purposefully?

10 A. Correct.

11 Q. And if a pilot is off-duty and they offer to
12 do a callback, but dispatching them would result in a
13 violation of BPC rest rules or in any other unsafe
14 situation, would B -- PSP ever intentionally dispatch
15 that pilot to a job in violation of those rules?

16 A. No.

17 Q. So it's fair to say, PSP dispatchers would
18 never knowingly schedule a pilot in violation of any BPC
19 rest rules of in any knowingly unsafe way?

20 A. That's correct. It would be completely
21 unintentional if that happened.

22 Q. So looking at the pilot dispatch records for
23 certain pilots, if a pilot worked, for example,
24 hypothetically -- you don't have to pull up any records.

25 A. Oh, okay.

1 Q. Yeah. So just hypothetically, if a pilot
2 worked 165 assignments in a year and that included a
3 combination of on-watch jobs and off-watch callbacks,
4 can we assume that every pilot dispatched was
5 well-rested and dispatched in a manner consistent with
6 BPC rules?

7 A. Well, we would never intentionally dispatch a
8 pilot outside of the rest rules. It has happened and
9 it's been a mistake, but very seldom.

10 Q. Thank you.

11 Your testimony also discussed delays and delay
12 reporting. And as you mentioned just now, you've worked
13 as a dispatcher for PSP for several decades now; right?

14 A. Correct.

15 Q. And you take pride in doing that job well?

16 A. I do.

17 Q. And you've established good working
18 relationships with your colleagues and your customers?

19 A. Very much so, I believe.

20 Q. When there are not enough pilots, regardless
21 of whether they are on watch or off watch, you know,
22 when there are not enough who make themselves available
23 to pilot, you may have to delay a vessel; right?

24 A. That's correct. If we cannot find a pilot or
25 we don't have enough rested pilots, yes, we would have

1 to delay a vessel. We never want to, but we may have
2 to.

3 Q. Now, you've provided an email, Exhibit BV2,
4 from PSP President Carlson.

5 MR. HAGLUND: It'll be on the screen.

6 THE WITNESS: Okay. I've got it here as
7 well.

8 Q. (By Ms. DeLappe) Wonderful. So it's an email
9 from PSP President Carlson to the dispatcher saying --
10 I'll just quote a part of it: "Please contact me prior
11 to any delay over five hours. I am keenly aware of the
12 horrible spot you are put in and think you are all doing
13 a fantastic job, but the buck must stop here and I will
14 take the heat for anything over five hours."

15 As a dispatcher, are you the one who has to
16 actually call the customer to let them know about the
17 delay?

18 A. Yes.

19 Q. Am I right to assume that that's not a fun
20 call to make?

21 A. Yeah. You are correct. We do not like to
22 make those calls.

23 Q. As a dispatcher, you try hard not to have to
24 make that type of call because you prefer to move the
25 customer's ship on time and you don't want to disappoint

1 a customer; right?

2 A. That's correct. We strive to move the ships
3 on time or as close to on time as possible.

4 Q. Do any of your customers have any other
5 pilotage service that they can call besides PSP to
6 satisfy their legal obligations under Washington law?

7 A. No. There's only Puget Sound Pilots for Puget
8 Sound ports.

9 Q. So none of your customers actually have a
10 choice to agree or disagree to a delay, do they?

11 A. They don't have a choice, but we do discuss it
12 with them. And it's possible if it's going to create
13 too much of a painful situation for that customer,
14 possibly we can look elsewhere to do a delay. We would
15 discuss it with them at length, and most delays are --
16 we hope are insignificant.

17 Q. So --

18 A. Some of them obviously are very painful.

19 Q. Yes. And when that occurs, your customer,
20 whether they are unhappy and upset about it or whether
21 they are polite about it, they don't really have another
22 place they can call to resolve the matter; right?

23 A. No.

24 Q. Thank you.

25 MS. DeLAPPE: I have no further

1 questions, your Honor.

2 Thank you, Mr. Valentine.

3 THE WITNESS: Thank you.

4 JUDGE HOWARD: All right. Any redirect?

5 MR. HAGLUND: Yes, your Honor.

6

7 REDIRECT EXAMINATION

8 BY MR. HAGLUND

9 Q. Mr. Valentine, looking at that last topic that
10 was being discussed, when there is a situation where a
11 delay is necessary, what -- could you give the
12 Commissioners a sense of -- when you look at these calls
13 regarding delays, how often would you estimate that
14 they're resolved cooperatively and by mutual agreement
15 with the agent?

16 A. In my opinion, I'd say it's a very high
17 percentage, maybe 85 or 90 percent, although it depends
18 on the time of year. With the upcoming cruise season, I
19 expect there may be some delays that nobody wants to
20 see. It's just a lack of pilots.

21 Q. So do you get many complaints from customers?

22 A. No.

23 Q. Are the agents -- are you involved in any sort
24 of social organization that has you in regular contact
25 with the shipping agents?

1 A. Yes, I am. Some of the agents are my very
2 best friends.

3 Q. And what's the name of that club that agents
4 and dispatchers for tugboat companies, pilots, steamship
5 agents are members of?

6 A. We meet regularly in the Yukon Club. And,
7 unfortunately, it was yesterday, so I missed that one,
8 but...

9 Q. You were waiting to testify yesterday so you
10 missed yesterday's meeting?

11 A. It's the first Thursday of every month, yes.

12 Q. And it's a social type of setting?

13 A. Yes.

14 Q. So you say that these agents are your friends,
15 is it fair to say that you are able to work out a
16 negotiated agreement on the delay almost all the time?

17 A. Almost all the time, yes.

18 Q. When it comes to -- there's testimony --
19 regarding delays, you also got testimony about the
20 discretion that you have and it's referenced in that
21 email that Ms. DeLappe inquired about that you, as
22 dispatchers, have the discretion to delay a ship up to
23 five hours.

24 Do you utilize that discretion to increase the
25 efficiencies of the pilots' opportunities to perform

1 jobs on watch?

2 A. Yes, very much so.

3 Q. Could you provide a couple of examples of how
4 you use modest delays to achieve greater pilot on-watch
5 efficiency?

6 A. Yes. Let me use an example of a vessel coming
7 into Port Angeles, let's say, for bunkers for fuel.
8 Let's use 0430 or 0400 is the expected ETA. If we move
9 that -- if we delay that vessel a half-hour or an hour
10 to 0500, we would reduce the three-and-out impact for
11 Puget Sound Pilots because that's considered a night
12 watch, and three-and-outs are very severe to dispatch in
13 losing pilots.

14 Q. Because with the three-and-out, what's the
15 interval of time that the pilot must be off -- you know,
16 off-duty?

17 A. Well, they must be off when he finishes that
18 last night assignment until 0800 the following morning
19 before he can be called for work again.

20 Q. So the example you just gave, you moved the
21 start time for the job a half-hour or an hour to get it
22 past 0500 and you avoid that night label for the -- for
23 the assignment?

24 A. Correct.

25 Q. Now, when you call an agent to talk about the

1 half-hour or the hour change, is that a -- is that an
2 issue with your agents, with your customers, generally?

3 A. No. A change -- a minimal change like that is
4 not an issue. And, conversely, on a departure from an
5 inside port, a half-hour to an hour change to a daytime
6 job is also usually pretty insignificant.

7 Q. Now, PSP is recording all of these delays
8 regardless of whether the agent is in complete agreement
9 that there's no problem with it; correct?

10 MS. DeLAPPE: Objection. That's --
11 objection. This is beyond the scope of
12 cross-examination. I did not ask him anything about
13 recording delays.

14 MR. HAGLUND: It's within the delay
15 category, your Honor. It's -- you can't get --

16 JUDGE HOWARD: I -- the cross did raise
17 the Exhibit BV-2, so I'm going to allow some redirect on
18 this.

19 Q. (By Mr. Haglund) Do you recall the question,
20 Mr. Valentine?

21 A. Could you ask it again, please?

22 Q. Is it -- is it the case that regardless of
23 whether the agent says, "Sure, a half-hour or one-hour
24 delay is fine," all of those have been recorded since
25 direction from Captain Carlson in sometime in 2020

1 or 2021?

2 A. I am hopeful that they're all recorded. It's
3 possible that, you know, we've got busy and not recorded
4 one. I don't know for sure.

5 Q. But is this the --

6 A. It's possible.

7 Q. It has been the effort for a couple years now
8 to accurately report all the delays regardless of
9 whether they are insignificant to the ship or not.

10 A. Yes.

11 Q. Okay. Lastly, when it comes to PSP's
12 objective in terms of providing pilotage service, how
13 would you characterize what your goal is?

14 A. My goal, and I believe the goal of all the
15 dispatchers, is to produce a pilot at the ordered time
16 specified by the agent at all times with, like, no
17 delays.

18 Q. So you're striving to provide on-demand
19 service?

20 A. We are.

21 Q. But given the size of the pilot core and the
22 work/rest rules, et cetera, delays are -- have been
23 inevitable in recent years?

24 A. That's correct.

25 Q. Okay. No further questions.

1 JUDGE HOWARD: Do we have any questions
2 from the bench for this witness?

3 COMMISSIONER DOUMIT: No, your Honor.
4 Thanks.

5 CHAIR DANNER: None from me, your Honor.

6 COMMISSIONER RENDAHL: Your Honor, I just
7 have one clarifying question.

8 When Mr. Haglund introduced the witness,
9 he asked him whether he had filed initial and rebuttal
10 testimony. I only see in the exhibit list rebuttal
11 testimony. I just want to note that for the record and
12 clarify that there was just one set of testimony.

13 MR. HAGLUND: You're right, Commissioner.
14 I apologize for the error.

15 JUDGE HOWARD: All right. Thank you,
16 Commissioner Rendahl.

17 Our next -- oh, Mr. Valentine, thank you
18 for your testimony. I believe that concludes your
19 examination. You are excused from the remainder of the
20 hearing.

21 THE WITNESS: Okay. Thank you.

22 JUDGE HOWARD: Our next witness is
23 Weldon Burton.

24 And I would just comment again that
25 open-ended questions on redirect are -- tend to be more

1 persuasive in the testimony they elicit.

2 All right. Mr. Burton, can you hear and
3 see me all right?

4 THE WITNESS: Yes, I can.

5 JUDGE HOWARD: Okay. Great. And you
6 were jumping ahead of me.

7 Do you swear or affirm that the testimony
8 you give today is the truth, the whole truth, and
9 nothing but the truth?

10 THE WITNESS: Yes, I do.

11 JUDGE HOWARD: All right. Thank you.

12 Mr. Haglund, would you please introduce
13 the witness?

14 MR. HAGLUND: Mr. Burton, how long have
15 you been involved in regulatory accounting?

16 THE WITNESS: Approximately, 50 years.

17 MR. HAGLUND: Did you prepare both
18 original and rebuttal testimony in this case?

19 THE WITNESS: Yes, I did.

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

22 THE WITNESS: Yes, it is.

23 MR. HAGLUND: I tender the witness for
24 cross-examination.

25 JUDGE HOWARD: Certainly. And, PMSA, you

1 may proceed. And I will just note, because I learn
2 something new from Commissioner Rendahl every day, that
3 I believe Weldon Burton also submitted supplemental
4 testimony, so I'll just note that in the interest of
5 completeness, but please proceed.

6 MS. DeLAPPE: Thank you, your Honor.

7

8 CROSS-EXAMINATION

9 BY MS. DeLAPPE

10 Q. And good morning, Mr. Burton.

11 A. Good morning, Ms. DeLappe.

12 Q. PSP is proposing to use actual individual
13 pilot transportation costs for its transportation of
14 expenses under the tariff; right?

15 A. That is correct.

16 Q. And that includes the costs of commuting to
17 and from pilots' homes?

18 A. That is -- that does not specify a specific
19 place. The charge is for the -- from the position
20 from -- the charge is per the tariff of \$168, I believe,
21 per trip.

22 Q. And, Mr. Burton, if a pilot, an individual
23 pilot's actual transportation costs are part -- include
24 their commute from the pilot's home in a specific
25 instance, then that would be part of what PSP is

1 proposing to include in the expenses under the tariffs,
2 would you agree with that?

3 A. PSP plan proposes to include the expense of
4 transportation from the port of origin to the -- the
5 job.

6 Q. Could you please turn to Exhibit WTB-24X?

7 A. Okay.

8 Q. And there you'll see copies of invoices that
9 UTC staff requested.

10 A. Yes, ma'am.

11 Q. And those are invoices that you used to -- as
12 the basis for the transportation expense proposed under
13 the tariff?

14 A. That is one of the invoices that was submitted
15 in response to the request.

16 Q. Do you see that WTB-24X is several invoices?

17 A. It is.

18 Q. It's not just one invoice, is it?

19 A. Yes, that's correct.

20 Q. So that's 71 pages; right?

21 A. That is correct.

22 Q. Okay. So if you see there -- starting on
23 Page 2, do you see that many of the locations have been
24 redacted?

25 A. It's the pilot name and the "from" have

1 been -- been redacted, and those "from" locations that
2 are redacted are the pilot's personal residence.

3 Q. Thank you.

4 And sometimes it's in the "to" location that
5 the redaction occurs. It's also because that's their
6 residence?

7 A. That's to their personal residence. That's
8 correct.

9 Q. So nearly all the invoices you have provided
10 us have one address or the other in the trip redacted
11 because they're a pilot's home address; correct?

12 A. That is correct.

13 Q. So to -- if you could please turn to
14 Exhibit WTB-18X, and that is the Commission's order,
15 final order in the last rate case. Are you familiar
16 with this?

17 A. Yes, ma'am.

18 Q. If you could turn to Page 86, Paragraph 274 --
19 so let me just get there with you. So that's 86 of the
20 exhibit, and do you see there --

21 A. Yes.

22 Q. So --

23 A. I have it.

24 Q. Thank you. I'll just read. It says on that
25 paragraph: "To the extent that PSP contracts with the

1 transportation companies owned by member pilots, PSP
2 should establish that these contracts are reasonable and
3 do not result in inflated transportation expenses.
4 Accordingly, we expect proactive disclosure of such
5 agreements in future rate case filings."

6 Do you agree that PSP has included Green Car
7 Club as one of the vendors in the transportation
8 requests in this current case?

9 A. Yes, ma'am.

10 Q. As we established in the prior rate case,
11 Green Car Club is owned by a group of pilots; right?

12 A. That is correct, and the pilots basically, to
13 my understanding, only charge the operating expenses and
14 a minor surcharge for capital replacement.

15 Q. And, Mr. Burton, if we could just stick with
16 answering my question and then you can stop. I need to
17 get through my time with you pretty quickly.

18 Did you or anyone else at PSP provide a
19 proactive disclosure of the Green Car Club contract or
20 agreement or payments from PSP back to other PSP-owned
21 companies in its testimony?

22 A. I think the Green Car Club is the only entity
23 such as you described and I personally did not.

24 Q. And are you aware of anyone else at PSP
25 providing any proactive disclosure of that information

1 in testimony in this case?

2 A. Not to my knowledge.

3 Q. Let's turn now to your pro forma spreadsheet,
4 please, Mr. Burton, at WTB-05, and specifically in the
5 results of operations tab.

6 Are you there?

7 A. We're pulling it up right now.

8 Q. Thank you. Let me know.

9 A. Okay.

10 Q. So what we're looking at here is the summary
11 of the pro forma and restating entries for all proposed
12 revenues and proposed expenses based on the tests here,
13 which, in this case, is 2021; right?

14 A. That's correct.

15 Q. In Column G, pro forma results, this is the
16 summary that PSP is proposing after all the restatements
17 and adjustments; correct?

18 A. That is the restated results for the pro forma
19 adjustments.

20 Q. So after all the restatements and adjustments,
21 what is the total revenue that PSP is proposing at
22 Row 17, Column G?

23 A. Row 17, Column G is \$29,962,293.

24 MR. HAGLUND: I think you read Column E.

25 Q. (By Ms. DeLappe) Yeah.

1 A. I'm sorry. Column G, excuse me. I was
2 looking at the Excel Column G. The pro forma is
3 \$48,029,036.

4 Q. Thank you, Mr. Burton.

5 And after all restatements and adjustments,
6 the total expenses that PSP is proposing at Row 74, in
7 Column G, would you agree with me that it is
8 \$19,139,323?

9 A. Yes, I would.

10 Q. And after all restatements and adjustments,
11 the total distributive revenue that PSP is proposing at
12 Row 77, Column G, is \$28,889,713?

13 A. That is correct.

14 Q. Total distributive revenue is total profit for
15 this enterprise, would you agree? And let me -- it's
16 net income that is total revenue less total expenses and
17 available for distribution to individual pilots, would
18 you agree with all of that?

19 A. That is correct.

20 Q. For 2021, the total distributive revenue based
21 on the restated results, so Row 77, Column E, is
22 \$13,946,112?

23 A. That is correct. That's what it shows.

24 Q. So bottom line, in PSP's pro forma is that PSP
25 is proposing an increase in distributive revenue from

1 the \$13,946,112 in 2021 to \$28,889,714 in the new rate
2 year?

3 A. I would disagree with that. The per book
4 amount -- 16,399,000 is the amount prior to regulatory
5 adjustments, and the increase to 28 million is the -- is
6 the difference, so it's \$28,889,713 minus \$16,399,852.

7 Q. And can you direct us to the cell that you're
8 looking at there for the part that you're subtracting?

9 A. The cell -- the -- that is Cell Column C,
10 Row 77. That's the per book amount.

11 Q. So you would -- what is the percentage that --
12 in your view of things, that PSP is proposing to
13 increase the profit of this enterprise by for in terms
14 of an increase in net income for pilots?

15 A. I would have to get a calculator to calculate
16 that, but it's approximately 50 percent.

17 Q. Thank you.

18 MS. DeLAPPE: No further questions,
19 your Honor.

20 And thank you, Mr. Burton.

21 JUDGE HOWARD: Any redirect?

22 MR. HAGLUND: Yes, briefly.

23

24

25

1 REDIRECT EXAMINATION

2 BY MR. HAGLUND

3 Q. Mr. Burton, are you aware of the type of
4 registered entity that the Green Car Club is?

5 A. My understanding is it's a domestic LLC.

6 Q. Is it a for-profit or a non-profit entity?

7 A. It's a non-profit entity.

8 MR. HAGLUND: No further questions.

9 JUDGE HOWARD: All right. Staff also
10 indicate cross from this witness.

11 MR. CALLAGHAN: Thank you, your Honor.

12

13 CROSS-EXAMINATION

14 BY MR. CALLAGHAN

15 Q. Good morning, Mr. Burton.

16 A. Good morning.

17 Q. Do you have a copy of your rebuttal testimony
18 with you?

19 A. Yes, I do.

20 Q. Could you turn to Page 6 and let me know when
21 you're there?

22 A. We're pulling it up right now, Page 6.

23 Q. Yeah.

24 A. Okay.

25 Q. All right. The first question on this page

1 is: "Do you agree with Mr. Young's claim that PSP
2 refused to provide requested information?" Is that
3 right?

4 A. No, I do not agree with that.

5 Q. No, I'm sorry. I'm just asking you if that's
6 the question on the -- in the testimony.

7 A. As I stated, I know -- understanding that the
8 economic support, in this case, was being supplemented,
9 as I stated in my supplemental testimony, supporting
10 workbooks containing more detail, support for PSP's
11 proposed adjustments can be provided. The -- those were
12 provided when requested by staff.

13 Q. Okay. In your answer, you state that, quote,
14 "PSP was fully responsive to staff's requests"; is that
15 true?

16 A. That's correct.

17 Q. Okay. Do you have a copy of Exhibit MY-2 with
18 you?

19 A. Yes.

20 Q. All right. Could you review Exhibit MY-2 and
21 let me know when you're finished?

22 A. Yes.

23 Q. All right. And Exhibit MY-2 is PSP's
24 responses to UTC Staff Data Requests Numbers 26, 30, 33,
25 and 38; correct?

1 A. That's correct.

2 Q. Did you write these responses?

3 A. I did.

4 Q. All right. And the first data request
5 response in this exhibit is Staff DR 26; correct?

6 A. That's correct.

7 Q. Could you read the response you wrote to Staff
8 DR 26 for me?

9 A. The test period for TP-220513 is the calendar
10 year 2021, 2021, and 220513-PSP-WP SB-22 pro forma on
11 6/29/22 was withdrawn by PSP. Please provide staff
12 reasoning for requesting an unduly burdensome additional
13 six months of data for an exhibit that has been
14 withdrawn.

15 Q. All right. You don't provide the information
16 that staff asked for in this data request, do you?

17 A. No, I do not.

18 Q. All right. Why didn't you provide this
19 information?

20 A. Because it's outside the test period. We
21 proposed a test period of calendar year 2021. They were
22 requesting information through the end of June '22.

23 Q. All right. In -- so is it your understanding
24 that requesting information outside of the test year is
25 off-limits?

1 A. This case is a litigated case, and moving the
2 test period forward six months would corrupt the data
3 and information that we had developed for this case.
4 This -- the rate year will be beginning sometime in '23,
5 not '22.

6 Q. I'm sorry. You said it would corrupt the data
7 and information. What do you mean by that?

8 A. We would have to rebuild and redo all the data
9 for -- for a bifurcated test period, when all of the
10 test period data had already been developed and remit
11 and filed with the Commission.

12 Q. So you didn't provide this information
13 for 2022 because you didn't think you needed to?

14 A. No, sir. That's not what I said. What I said
15 was the test period was calendar year 2021. The case
16 was filed in 2022 with a -- with a -- as a contested
17 case, which would put the case not being finalized until
18 2023 which is the rate year. The test year and the rate
19 year do not have to necessarily simultaneously agree.

20 In the unlitigated test cases, yes, generally,
21 the test year and the subsequent rate year are very
22 close, sometimes, as close as 60 to 90 days. This one
23 was at least 15 months away from the test period.

24 Q. So you didn't provide the information for 2022
25 because, in your mind, it was irrelevant to the case?

1 A. That's correct.

2 Q. Okay. Did you object to this data request?

3 A. Yes.

4 Q. Does -- does PSP object to this data request?

5 A. Not necessarily, but I asked for staff
6 reasoning for requesting additional information and an
7 unduly burdensome six months of data for an exhibit that
8 had been withdrawn.

9 Q. But you don't say, "PSP objects," or, "I
10 object," to this question. Do you?

11 A. No, sir. I'm not an attorney.

12 Q. All right. So are you aware of whether or not
13 there is a process to seek clarification for a data
14 request that was unclear to you?

15 A. Not specifically, no.

16 Q. All right. Could you turn to -- in MY-2, your
17 response to Staff DR 30(c) you don't provide a general
18 ledger for January through June of 2022 as staff
19 requested, did you?

20 A. That is correct.

21 Q. And that's for the same reason?

22 A. That is correct.

23 Q. All right. So, Mr. Burton, PSP has proposed
24 pro forma adjustments in this case, haven't they?

25 A. That is correct.

1 Q. All right. And what's your understanding of
2 offsetting factors for pro forma adjustments?

3 A. Define "offsetting factors," please?

4 Q. Well, so do you know whether or not a party
5 proposing pro forma adjustments needs to include
6 information about offsetting factors with those
7 adjustments?

8 A. I provide pro forma adjustments based on the
9 known and measurable increases in costs for the specific
10 account that I'm adjusting.

11 Q. Do you provide any information about other
12 aspects of PSP's expenses, finances, that might offset
13 those pro forma adjustments?

14 A. Again, I'm not quite of sure your question,
15 but I -- I analyze the cost data that I have and what
16 the known and measurable cost increases are going
17 forward.

18 Q. All right. And, again, in your response to
19 DR 30(c), you don't specifically raise an objection to
20 the question, do you?

21 A. No, I do not specifically raise an objection.

22 Q. All right. Could you read the request and
23 your response to Staff DR 33(b) for me?

24 A. Being, "Please provide receipts/invoices for
25 the month of June -- February '21, May of 2021, December

1 of 2021, February of 2022, and June 2022."

2 Response: "February '22, 2022, and June 2022
3 are outside the test period. All other requested
4 invoices are attached. PSP responds to DR 33."

5 Q. All right. And so for Staff DR 38, you don't
6 provide the data that staff requested for 2022 there
7 either, do you?

8 A. No, we do not provide the 2022 adjustments.

9 Q. All right. But is it your -- still your
10 testimony that PSP was, quote, "fully responsive to
11 staff's requests"?

12 A. Yes, I do, because we're proposing a 2023 rate
13 year and those are the adjustments that were provided.

14 Q. And for that reason, you were fully responsive
15 to staff's data request?

16 A. I believe so, yes.

17 Q. All right. Could you turn to Page 10,
18 Line 16, of your rebuttal testimony?

19 Let me know when you get there.

20 A. Page, yes.

21 Q. All right. In this part of your testimony,
22 you are disagreeing with Staff Witness Young's position
23 on the RedCloud Consulting costs; correct?

24 A. That is correct.

25 Q. And you state that the preliminary results of

1 RedCloud Consulting's work were, quote, "extremely
2 positive"; is that accurate?

3 A. That is my understanding, yes.

4 Q. Okay. In the question and answer set just
5 above that one, you state that PSP suspended work of --
6 suspended the work of RedCloud Consulting because it
7 wanted to be sure that the work completed to date was in
8 line with the -- what the commission intended prior to
9 continuing the project. Is that accurate?

10 A. You're reading from Page 10 of my testimony?

11 Q. Correct.

12 A. My rebuttal or -- okay. We have Mike Young's
13 rebuttal up. Excuse me. We had the wrong testimony.
14 I'm sorry.

15 Q. Oh, no problem. Take your time.

16 A. We want my rebuttal testimony, WTB rebuttal,
17 Page 10.

18 (Pause in the proceedings.)

19 MR. HAGLUND: Okay. It's up now,
20 Page 10.

21 Q. (By Mr. Callaghan) Do you want me to ask the
22 question again?

23 A. Yes, please.

24 Q. Okay. So you state that PSP suspended the
25 work of RedCloud Consulting because it wanted to be sure

1 that the work completed to date was in line with what
2 the commission intended prior to continuing the project;
3 is that right?

4 A. That's correct.

5 Q. Okay. So is it your understanding that PSP
6 wasn't sure whether or not the work completed by
7 RedCloud Consulting was in line with what the commission
8 intended?

9 A. No. The work for Red -- that RedCloud was
10 performing was to further enhance and improve the
11 dispatch system. And they basically put RedCloud on
12 hold to go through this case and get -- get through this
13 filing. They fully intend to request that RedCloud
14 return and complete the project after the case is
15 complete.

16 Q. To your knowledge, did PSP ever seek
17 clarification from the commission regarding whether the
18 initial results of RedCloud Consulting were in line with
19 what the commission intended?

20 A. No, I'm not aware of that.

21 Q. All right. In your testimony, you state that
22 the preliminary results were extremely positive. That's
23 quite an endorsement, and so why suspend this work if it
24 was extremely positive?

25 A. Because it's my understanding that they chose

1 to suspend it to allow their efforts and their
2 concentration to go through this case and get through --
3 get through this filing process and then come back and
4 commence the work again and begin the work to resolve
5 it.

6 Q. Okay. So I have one last set of questions and
7 I want to clarify PSP's position on the impacts of the
8 PPP loan and its forgiveness on rates going forward.

9 So is it -- am I correct in stating that it's
10 PSP's position that the loan and its forgiveness should
11 have no impact on rates going forward, and the rationale
12 is that because that's an event that's not going to
13 reoccur in the rate year; correct?

14 A. That is -- that is a nonrecurring event that
15 was a special program by the federal government for all
16 companies. To imply that those monies should be
17 included in rates would react -- would be retroactive
18 rate-making.

19 Q. So taking them out of the rate-making
20 calculation to make sure that they don't have an impact,
21 that wouldn't be retroactive rate-making, though, would
22 it?

23 A. It was -- the monies were received and
24 expended outside the test period. The loan was forgiven
25 in June of 2021. That forgiveness was not considered

1 income by the federal or state government.

2 Q. Right.

3 So my question is: The loan and its
4 forgiveness shouldn't have a negative or positive impact
5 on setting rates; correct?

6 A. It should not have any effect on rates
7 whatsoever.

8 Q. Okay. Thank you.

9 MR. CALLAGHAN: That's all I have. Thank
10 you, your Honor.

11 JUDGE HOWARD: Any redirect?

12 MR. HAGLUND: Yes, briefly, your Honor.

13

14 REDIRECT EXAMINATION

15 BY MR. HAGLUND

16 Q. Mr. Burton, did -- with respect to the DRs
17 that you were asked about, did staff follow-up in any
18 way?

19 A. No, they did not.

20 Q. To your knowledge, was there any motion to
21 compel production of those materials?

22 A. No.

23 MR. HAGLUND: No further questions.

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

1 CHAIR DANNER: Yeah. I have a few.

2 Good morning, Mr. Weldon. Just following
3 up. I just want to be clear, didn't you use 2022 as a
4 year for certain expenses? Do I recall the fuel, for
5 example, you used 2022?

6 THE WITNESS: We updated fuel costs
7 through the errata through '23, through March of -- I
8 believe March of '23.

9 CHAIR DANNER: And do you recall --

10 THE WITNESS: Staff adjusted fuel through
11 June of '22, if I recall, and we adjusted fuel based on
12 the most recent price according -- at the time we filed,
13 according to WAC -- just a minute -- WAC 480-70-346.

14 CHAIR DANNER: Are there any other
15 instances where you used 2022 for expenses?

16 THE WITNESS: Not to my knowledge,
17 Commissioner, not that I recall immediately.

18 CHAIR DANNER: Yeah. And, yesterday, we
19 heard from Mr. Lough that 2021 was a COVID-impacted
20 year, so would there be any anomalies in that year that
21 would make it inappropriate for a test year, that
22 information from 2022 might be helpful?

23 THE WITNESS: Not that I recall. The
24 anomaly was the number of customers or ships calling,
25 but the PSP expense were not anominal. They continued

1 at the same level as prior years and going forward.

2 CHAIR DANNER: Mm-hmm. Mm-hmm. Okay.
3 Could I ask you also, we have a WAC, 480-07-525(4)(m),
4 that requires a submission of projected changes in
5 vessel assignments when submitting a general rate case.
6 I'm just wondering if you can tell me where I would find
7 that in the testimony and exhibits?

8 THE WITNESS: I believe it's in the
9 revenue calculation, Commissioner. I can't give you the
10 exact page number right off the top of my head. Sorry,
11 I can --

12 CHAIR DANNER: Maybe that's -- maybe
13 that's something we could get, because I didn't -- I
14 wasn't able to find it and I just want to make sure it's
15 either there or that you filed a request for rule
16 exemption.

17 THE WITNESS: We will get that
18 information to you, Commissioner.

19 CHAIR DANNER: All right. I appreciate
20 it very much.

21 And you were asked some questions about
22 RedCloud. I just want to make sure you said that you
23 were going to postpone it until after this rate case and
24 so it has not been resumed; is that correct?

25 THE WITNESS: That is correct.

1 CHAIR DANNER: Okay. And, also, you
2 state that the -- the work that was provided by RedCloud
3 was used and useful, I was just wondering if you could
4 explain to us in detail how that was useful to customers
5 using PSP services.

6 THE WITNESS: It's -- it's enhancing the
7 dispatch system for callbacks and other items that
8 Brett Valentine explained in his testimony just previous
9 to me.

10 CHAIR DANNER: All right. So when I'm
11 asking if it's used and useful, you're saying look at
12 Mr. Valentine's testimony and it's explained?

13 THE WITNESS: It's my understanding -- to
14 the best -- that's my best understanding, Commissioner.

15 CHAIR DANNER: Hmm. All right. Thank
16 you. I have no further questions.

17 JUDGE HOWARD: Any further questions from
18 the bench for this witness?

19 COMMISSIONER DOUMIT: Yes, your Honor.
20 If I could, please? Thanks.

21 JUDGE HOWARD: Please go ahead.

22 COMMISSIONER DOUMIT: Thanks.

23 Relating to TOTE, Mr. Burton, your --
24 let's see. Looking at Exhibit WTB-4T at Page 8,
25 Lines 15 through 20, and Burton Exhibit WTB-5R. Tell me

1 when you see those.

2 THE WITNESS: Page 8 of the testimony.

3 COMMISSIONER DOUMIT: Page 8 of the
4 testimony, yeah. And I can refer to what I'm talking
5 about here if you want to jog your memory.

6 The testimony is that PSP has deferred
7 funds relating to the last rate case in
8 Docket TP-190976, totaling \$124,239 reflecting the
9 incremental difference in revenue collected from the --
10 from TOTE based on the prior GRT tonnage versus a tariff
11 GT ICT measurement. And I want to just point out what
12 TOTE claims, that the GT ICT results in \$378,411.84 in
13 additional costs in Rate Year 1, and \$383,825.92 in
14 additional costs in Rate Year 2.

15 Do you agree with those TOTE
16 calculations? And if not, just please state the reasons
17 for the disagreement.

18 THE WITNESS: The adjustment I made was
19 based on the Order 13, I believe, in -- at the
20 commission regarding TOTE made the calculation we
21 overcharged.

22 COMMISSIONER DOUMIT: Okay. Explain --
23 elucidate a little further, if you would, please?

24 THE WITNESS: Okay. And I would have to
25 pull it up, but in the -- in the original case, in, I

1 think it was Order 13, where the Commission basically
2 agreed with TOTE that there was an overcharge and that
3 overcharge was recorded on PSP's books and we took it
4 out of the regulated income.

5 And if you'll give me a minute, I'll find
6 my...

7 COMMISSIONER DOUMIT: Take your time.
8 Thank you.

9 MR. HAGLUND: Commissioner, the pages
10 that we had up, I don't think is the right page. Were
11 you referring to Mr. Burton's supplemental testimony or
12 rebuttal testimony?

13 COMMISSIONER DOUMIT: Hold on. Just a
14 minute. I'll check. Supplemental testimony, it must
15 be.

16 MR. HAGLUND: So was it on Page 8,
17 because we don't see figures on Page 8.

18 COMMISSIONER DOUMIT: Hang on a second.
19 Well, I'm not locating it now. I
20 apologize.

21 Let me just ask: Would you agree that
22 your -- in terms of -- based on the materials of the
23 Order 13, would you agree that your -- what you suggest
24 be set aside, the incremental difference in revenue
25 collected from TOTE, based on the GRT versus the

1 international measurement, was 124,239? 124,239?

2 MR. HAGLUND: I believe that is the
3 correct number we have presented.

4 THE WITNESS: Yes.

5 MR. HAGLUND: That covers the partial
6 year in 2021 and then into current.

7 COMMISSIONER DOUMIT: Right. I'm asking
8 Mr. Burton why -- to explain the discrepancy, which
9 Mr. Haglund just helped you with, and I guess that may
10 be the answer.

11 Why the difference between your -- what
12 you preserved and what TOTE has claimed?

13 THE WITNESS: I cannot tell you. I have
14 not reconciled those differences.

15 MR. HAGLUND: If you wish, Commissioner,
16 we could make this is a subject of the bench?

17 COMMISSIONER DOUMIT: Yes, let's do that.
18 Yes, let's do that. Thank you.

19 MR. HAGLUND: And I take it,
20 Commissioner Danner, should we treat the -- the issue on
21 the changes in -- or the assignments issue you requested
22 the information about, and the information you asked
23 about regarding the suspension of RedCloud is not in
24 Mr. Valentine's testimony. I don't think it's explained
25 directly anywhere but we could answer that question if

1 you make it a bench request.

2 CHAIR DANNER: Well, I just wanted to
3 know how that work is used and useful. I don't think I
4 need it as a -- I just wanted to see what Mr. Weldon's
5 views on it were, so, no, I don't need it. I do,
6 however, want to know where I could find the projected
7 changes in vessel assignments in the record.

8 MR. HAGLUND: We'll get that to you,
9 Commissioner.

10 COMMISSIONER DOUMIT: And, Judge Howard,
11 no further questions from me. Thank you.

12 Thank you, Mr. Burton.

13 JUDGE HOWARD: All right. Thank you. I
14 anticipate that we may be issuing written bench requests
15 that will provide more specific language for PSP and a
16 response timeline for any of these possible bench
17 requests that have come up just now, and that will be
18 issued in the docket after the hearing if they are.

19 All right. Well, Mr. Burton, thank you
20 for your testimony today. I believe that will conclude
21 your examination and you are excused from the remainder
22 of the hearing.

23 THE WITNESS: Thank you.

24 JUDGE HOWARD: All right.

25 MR. HAGLUND: Can we take a brief break?

1 JUDGE HOWARD: I think a brief break
2 would be -- would be good. We were a little short with
3 our breaks yesterday. I think it would be fine to
4 return to a more normal break schedule. Let's take a
5 15-minute break and return here at 10:37.

6 All right. We are off the record. Thank
7 you.

8 (A break was taken from
9 10:23 a.m. to 10:37 a.m.)

10 JUDGE HOWARD: Let's get back on the
11 record. It's 10:37 a.m. We're returning after our
12 morning break.

13 Our next witness is Kathleen Nalty with
14 PMSA.

15 Can you see and hear me all right?

16 THE WITNESS: Yes.

17 JUDGE HOWARD: All right. Great. If
18 you'd please raise your right hand, I'll swear you in.

19 Do you swear or affirm that the testimony
20 you give today is the truth, the whole truth, and
21 nothing but the truth?

22 THE WITNESS: Yes.

23 JUDGE HOWARD: All right. Thank you.

24 Ms. DeLappe, would you please introduce
25 the witness?

1 MS. DeLAPPE: Ms. Nalty, could you please
2 state your full name?

3 THE WITNESS: My name is Kathleen Nalty.

4 MS. DeLAPPE: And can you tell us your
5 employer and position?

6 THE WITNESS: I am the President of
7 Kathleen Nalty Consulting. I own my own consulting
8 business.

9 MS. DeLAPPE: As you know, your prefiled
10 testimony and exhibits have already been accepted into
11 evidence. Are you now adopting those under oath?

12 THE WITNESS: Yes.

13 MS. DeLAPPE: Thank you.

14 I tender the witness.

15 JUDGE HOWARD: All right. PSP indicated
16 cross, and you may proceed.

17 MR. BRICKENSTEIN: Thank you, your Honor.

18

19 CROSS-EXAMINATION

20 BY MR. BRICKENSTEIN

21 Q. Good morning, Ms. Nalty, and thank you for
22 being here. My name's Eric Brickenstein and I'm an
23 attorney for the Puget Sound Pilots.

24 You're a lawyer by training; is that correct?

25 A. Yes. I graduated from the University of

1 Colorado Law School in 1985.

2 Q. But for the past 22 years, a little over two
3 decades, you have worked in DEI training and consulting;
4 right?

5 A. Yes, mm-hmm.

6 Q. And apart from being hired by the PMSA in this
7 case, you've never done any work in your DEI consulting
8 capacity or provided consulting in the marine piloting
9 space, have you?

10 A. That's correct.

11 Q. Okay. And just -- in looking at your CV, I
12 didn't see anything. You haven't done any work in DEI
13 consulting in the maritime sector at all; is that
14 accurate?

15 A. That's accurate.

16 Q. Okay. You say in your testimony --

17 MR. BRICKENSTEIN: And, Mr. Crandall, if
18 we could please pull up KN-1T at Page 17 and highlight
19 Lines 8 through 11?

20 Q. (By Mr. Brickenstein) You say: "I never give
21 prescriptive answers to my clients," presumably in your
22 DEI consulting work. "I prefer to engage leaders in
23 problem-solving and action planning themselves so that
24 they can," quote, unquote, "own it, which will increase
25 the chances that any solutions or actions will be

1 taken."

2 Do you stand by that testimony?

3 A. Yes.

4 Q. Okay. And wouldn't you agree that that's
5 because leaders in the organizations that you counsel,
6 they'll often have insights with respect to the unique
7 dynamics within their own organization or industry that
8 can make their input into DEI-related strategic planning
9 very valuable; is that fair to say?

10 A. I would agree with that.

11 Q. Okay. You know, as I was reading through your
12 testimony, there was -- there was one thing that kind of
13 stood out to me, and that's that I think we're actually
14 going to find a lot of common ground over the course of
15 your cross-examination. And one of the points that you
16 make --

17 MR. BRICKENSTEIN: If you could please
18 pull up Page 18, lines 18 through 21?

19 Q. (By Mr. Brickenstein) You say: "Advancing DEI
20 leads to better decision-making, performance,
21 productivity, retention, innovation, engagement, which
22 means that organization and individual members will
23 perform better."

24 Could you elaborate on that principle for me a
25 little bit?

1 A. Sure. There's been a number of research
2 studies conducted over the last 20 years that
3 demonstrate that organizations that have a wide variety
4 of diversity within them and an inclusive environment
5 that unleashes the diverse perspectives, the diversity
6 of thought, as well as the cognitive benefits that are
7 derived from being or working with people with visible
8 social identity differences, that there are correlated
9 business benefits to having that kind of environment be
10 present within an organization.

11 Q. Thank you.

12 And did you have an opportunity to read
13 Captain Sandy Bendixen's testimony in the course of your
14 preparation?

15 A. I read -- I recall reading parts of her
16 testimony, and I do recall that I -- I saw evidence of
17 her understanding of why diversity in an organization is
18 beneficial in terms of, you know, some of these business
19 benefits. So I --

20 Q. Yeah.

21 A. -- I was so happy to see that recognition.

22 Q. Yeah, that's great. I appreciate that. And,
23 in fact, let's -- why don't we pull it up real quick. I
24 think I know what you're referring to.

25 MR. BRICKENSTEIN: Mr. Crandall, can you

1 go to SB-1T, at Page 4, Lines 9 through 14, or I guess
2 it's actually Lines 8 through 13. Excuse me.

3 Q. (By Mr. Brickenstein) Is that the passage that
4 you were referring to, Ms. Nalty?

5 A. Let me just take a look really quick.

6 Q. Sure. And I can -- I can read it as well if
7 you'd like.

8 A. No, no.

9 Q. It says --

10 A. No, I can --

11 Q. Oh, no. No problem. Go ahead.

12 A. This was one of the passages that I had been
13 exposed to that I thought evidenced a better
14 understanding of why diversity in organizations is so
15 critical, but part of it is not just the diversity
16 itself, but the inclusive workplace environment that is
17 necessary.

18 Q. I --

19 A. But diversity does -- yes, sorry, go ahead.

20 Q. No, no, no problem. And I think that's a
21 great point and I think it's another area of our
22 agreement and we're going to get to it, inclusiveness,
23 in just a second -- inclusion in just a second.

24 A. All right.

25 Q. But, first, I want to read you the Puget Sound

1 Pilots' mission statement, okay?

2 It says: "The mission of the pilots is to
3 ensure against the loss of lives, the loss of or damage
4 to property and vessels, and to protect the marine
5 environment by maintaining efficient and competent
6 piloted service on the state's inland waters within the
7 Puget Sound pilotage district."

8 And so I guess my question for you is: You
9 would agree that with respect to PSP, achieving greater
10 diversity within the pilot core is really a critical
11 step to maximizing safety on the water and environmental
12 protection in Washington; correct?

13 A. Yes.

14 Q. Okay. Thank you.

15 Now, let's turn to inclusiveness. And as I
16 mentioned, I think it's another area you're going find a
17 lot of agreement with Captain Bendixen.

18 So you do consider inclusiveness to be a
19 critical component of realizing and maintaining the
20 benefits of a diverse workforce; is that fair?

21 A. Absolutely.

22 Q. Okay. And in your written testimony, you
23 describe inclusion as being about the lived experience
24 that people have within the organization; right?

25 A. Yes. I mean, it's -- it's more than that, but

1 that's one way of kind of encapsulating it.

2 Q. Sure. It's a quote from Page 9 of your
3 testimony.

4 A. Mm-hmm.

5 Q. So you would agree, in other words, that the
6 opinions of employees from diverse or underrepresented
7 backgrounds themselves, whether they feel included or
8 excluded, that's an important measure of the
9 organization's performance on inclusion; fair?

10 A. I'm sorry. Can you ask that question again?

11 Q. Sure.

12 Would you agree that the opinions of the
13 employees themselves that come from diverse and
14 underrepresented backgrounds within an organization,
15 whether they feel included or excluded among their
16 colleagues and within their work environment, that's an
17 important measure of how the organization's performing
18 with respect to inclusion, is it not?

19 A. I agree.

20 Q. Thank you.

21 Are you aware -- I know you read some of
22 Captain Bendixen's testimony. Are you aware that she's
23 the first female pilot with PSP and is also a member of
24 the Board of Pilotage Commissioners?

25 A. Yes, I've been made aware of that.

1 MR. BRICKENSTEIN: Okay. Can we go ahead
2 and pull up SB-01T at Page 6, Lines 14 through 20?

3 Q. (By Mr. Brickenstein) And I'd like to -- I'd
4 like to read you another excerpt from Captain Bendixen's
5 testimony. She says: "I had also been mentored by
6 Puget Sound Pilots while sailing as a young third mate.
7 These individual pilots followed me during the early
8 years of my career, checking in, offering advice, and
9 encouraging me to grow my career. The positive impact
10 that these pilots and their outreach had on me is a key
11 reason that I became a Puget Sound Pilot. The
12 supportive culture of our association continued once I
13 became a pilot, with more senior pilots providing
14 guidance on challenging jobs and encouraging me to take
15 on leadership roles."

16 And I guess my question for you, Ms. Nalty, is
17 in your opinion, does Captain Bendixen's testimony
18 reflect an organization that's serious about inclusion?

19 A. I think that the anecdotal evidence from one
20 person is important, but I can't agree with such a
21 blanket statement about whether the organization is
22 inclusive, especially of people who are in other
23 underrepresented groups.

24 Q. That -- that's a fair qualification, but
25 insofar as we were just discussing the views of the

1 employees themselves on whether or not they feel
2 included, this would certainly be an indicator of an
3 inclusive environment, would it not?

4 A. Well, this particular testimony seems to be
5 from before she became a pilot. Oh, she says the
6 supportive culture of the association, so, again, yes.
7 And it's my understanding that she's the only female
8 pilot in the entire organization, and I'm -- I'm glad to
9 hear that she thinks that it is supportive. But, again,
10 it's just the experience of one single person, and
11 whether someone else coming into the organization may
12 feel that supportive culture, that's just speculation.
13 Who would know?

14 Q. Sure. No, that's fair, and you're correct
15 that Captain Bendixen is the only female pilot
16 currently, and that's exactly what we're working to
17 change.

18 Let's look at another excerpt from her
19 testimony.

20 MR. BRICKENSTEIN: Mr. Crandall, if you
21 could go to Page 7, at Lines 1 through 20.

22 Q. (By Mr. Brickenstein) And this is a passage
23 where Captain Bendixen discusses Puget Sound Pilots'
24 response to physical limitations that she experienced
25 during her pregnancy and her recovery from a complicated

1 childbirth.

2 And so I'll just -- I'll quote again: "Upon
3 reviewing notice from my doctor that I was not fit for
4 duty, the PSP board unanimously voted to apply the
5 rule" -- and I'll just represent to you that the rule
6 she's referring to is PSP's major medical leave policy
7 -- "so they applied the rule to my pregnancy when I was
8 no longer fit to climb a pilot ladder and to recover
9 following a complicated delivery. Even before I was
10 declared not fit for duty, my fellow pilots routinely
11 volunteered their time to work for me, trade assignments
12 with me, and generally do anything they could to support
13 me as we traveled together down the path of discovering
14 how a pilot in Washington can balance our incredibly" --
15 excuse me -- "our incredible professional challenges and
16 being a mother. For me" -- and, again, she's speaking
17 just for her own experience -- "this entire experience
18 proved more than perhaps any other that PSP doesn't just
19 claim to be supportive of its pilots, but actually walks
20 the walk."

21 And so my question for you, Ms. Nalty, in your
22 experience as a DEI consultant to law firms and other
23 large companies, if one of your clients received that
24 type of the feedback from an employee from an
25 underrepresented background, what would your reaction to

1 that be?

2 A. Again, it's just a single employee in a
3 majority -- in a dominant group environment. There's
4 research that is referred to as the locker room and
5 living room syndrome where white men are more
6 comfortable with white women, for example, because they
7 encounter them in their living rooms and, perhaps -- you
8 know, perhaps -- I mean, we're just speculating, but if
9 it had been -- if she had been a female employee of
10 color or an LGBTQ female employee or any other
11 intersectional identity, there might not have been quite
12 as, you know, a welcoming environment provided. I don't
13 know. It's -- it's just hard to make generalizations
14 based on the experience of one person.

15 Q. Perhaps, Ms. Nalty, and you are just
16 speculating. And this was Ms. Bendixen's -- or
17 Captain Bendixen's -- excuse me -- lived experience, but
18 you didn't answer my question which is just: If one of
19 your clients came to you and said, "Hey, I have an
20 employee from an underrepresented background, and this
21 was their feedback on my organization after, say,
22 participating in one of your workshops," what would you
23 reply email look like? What would your reaction be?

24 A. Again, I would have to tell the client that
25 the lived experience of one person is important and

1 should be taken as -- at face value. But in a -- a
2 majority-dominated culture, the research says that if
3 you bring in people from other underrepresented groups,
4 the environment may not treat them the same. That's
5 what I'm trying to express.

6 So I would tell the client, "That's wonderful
7 that you've got that single employee that's having that
8 experience of belonging and inclusion, but what if you
9 brought in other people from a variety of diverse
10 backgrounds? Would the culture still be the same?
11 Would they be as welcoming? Would they be as investing
12 in that person's success?"

13 Q. Thank you. Right. And -- and just to be
14 clear -- and that is, again, exactly what we're trying
15 to accomplish, and you state in your testimony that if
16 an organization does not practice inclusion -- this is
17 at Page 12 of your testimony -- then that group will not
18 achieve its DEI goals; right?

19 A. Right.

20 Q. And -- and I just want to be clear that apart
21 from your speculation about what might happen if
22 somebody joined PSP, all of the evidence in this case is
23 that PSP is practicing inclusion -- isn't that true? --
24 aside from your speculation.

25 A. No. I can't agree with you, because their

1 inclusiveness is a process that an organization engages
2 in to de-bias all of their processes. So I -- I
3 understand that there is a new maternity policy, which
4 is -- you know, kudos to the organization for adding
5 that policy to the books. But, you know, a single
6 policy or some outreach are just sort of the -- the
7 beginning steps of creating a fully-inclusive
8 organization that would be viewed as being welcoming of
9 a wider variety of people, not just white women, for
10 example.

11 Q. Right. And I think, you know, another point
12 that comes across, and we don't have time or need to
13 rehash all the evidence in this case, but I think
14 another point where PSP would agree with you on multiple
15 fronts is that we should never be satisfied and we
16 should always be striving for improvement in all facets,
17 be that DEI or navigation or, you know, what have you,
18 so I -- I agree with that point, but do I want to turn
19 to another topic.

20 MS. DeLAPPE: I would object to counsel
21 continuing to state his own opinions as part of the
22 testimony here. The witness is Ms. Nalty.

23 JUDGE HOWARD: I will have to grant that
24 objection. The -- of course, cross-examination should
25 be almost strictly an opportunity for simply asking

1 questions and counsel's opinions are -- cannot be relied
2 on as evidence.

3 MR. BRICKENSTEIN: Sure. Thank you,
4 your Honor, and I'm moving on.

5 Q. (By Mr. Brickenstein) And I want to turn to
6 another topic, which is recruiting. And I think it's
7 another area where we're going to find agreement --
8 right? -- because even though inclusion is critical to
9 an organization's DEI success, in order to build
10 diversity within an organization, you do also need to
11 have effective recruiting.

12 You would agree with that, Ms. Nalty; correct?

13 A. Yes.

14 Q. Okay. And one thing that you say in your
15 testimony --

16 MR. BRICKENSTEIN: And, Mr. Crandall, if
17 we could pull up KN-13, Lines 4 through 12.

18 Oh, I beg your pardon, it's Page 13,
19 KN-1, Page 13. Yeah, my fault.

20 Lines 4 through 12, please.

21 Q. (By Mr. Brickenstein) You say, Ms. Nalty:
22 "Research by the Corporate Executive Board referenced
23 above" -- that's the research that you cite -- "shows
24 that people in underrepresented groups conduct job
25 searches much differently than those in majority groups.

1 They seek personal reassurances/references that the
2 organization is a good place to work so they're relying
3 more on personal avenues rather than job postings"; is
4 that -- that correct?

5 A. Yes.

6 Q. Okay. Did you -- well, I guess, first, let me
7 ask you this: Did you -- did you have an opportunity to
8 read Captain Dempsey's testimony?

9 A. I don't know if I recall specifically reading
10 Captain Dempsey's testimony.

11 Q. Okay. So -- I'm sorry. Go ahead.

12 A. Is there anything in particular that --

13 Q. Yeah. There is, and I'll pull it up for you
14 in a second, but, first, I'll just go ahead and
15 represent to you that Captain -- Captain Dempsey's the
16 first Columbia River Bar Pilot. She was also the first
17 female captain to deliver -- and this is in her
18 testimony -- military supplies into a war zone. And,
19 more recently, she's been involved with the Washington
20 Board of Pilot Commissioners' Diversity, Equity, and
21 Inclusion Committee.

22 MR. BRICKENSTEIN: And so go ahead and
23 pull up DDD-1T, Page 4, Lines 12 through 25.

24 Q. (By Mr. Brickenstein) And I think this is a
25 good tie-in, and I'll ask you about it in a second, to

1 what -- to what you were just discussing in your
2 testimony.

3 But there's -- there's a question presented by
4 PSP. It says: "Can you provide an example of how you
5 assisted a young woman pursuing a career in the maritime
6 industry?"

7 And -- and interestingly enough, the example
8 that Captain Dempsey gives is -- is Captain Bendixen.
9 And she says: "Yes, I'll use Captain Sandy Bendixen,
10 the first female pilot licensed in Washington." And she
11 goes on to describe -- and we don't need to read it in
12 full -- you can if you'd like.

13 But she goes on to describe all of the efforts
14 that she made to welcome Captain Bendixen into the
15 profession, to encourage her to become a pilot, taking
16 her out to sea, and then she also sets her up with
17 another female pilot, Captain Anne McIntyre, former
18 Columbia River Pilot who is also a witness in this case,
19 for further inclusive experience and -- and training, or
20 exposure, I should say.

21 Would you agree that this is an example of the
22 type of recruiting outreach that you've identified as
23 being critical to recruiting candidates from
24 underrepresented backgrounds? That's the personal touch
25 that is important?

1 A. Yes. This is -- and this is one example of
2 what needs to be done to create a better and more
3 diverse pipeline into this -- not just this industry,
4 but any other sector industry.

5 Q. Right.

6 A. This is what's not happening on a regular
7 basis in organizations that are dominated by white men.

8 Q. Right. So --

9 A. They are -- I'm sorry. Go ahead.

10 Q. Oh, no, no. Continue. I didn't mean to cut
11 you off. Go ahead.

12 A. Yeah. So the research, and even my anecdotal
13 experience over the past two decades, demonstrates that
14 majority groups, which, in most sectors and industries,
15 are white men, are exhibiting affinity bias and
16 investing in the success and futures of people who
17 remind them of themselves. And people who are outside
18 of that affinity group, women, people of color, LGBTQ
19 people, et cetera, are often not invested in at the same
20 level.

21 But you -- here is one example of a female
22 pilot reaching out, understanding that another female
23 pilot might not benefit from the -- you know, the
24 majority group's mentoring and sponsorship, and taking
25 personal responsibility for pulling that person, you

1 know, up and investing in that person. And I'm sure
2 that Captain Bendixen would look to her as having, you
3 know, made a significant difference in her becoming --
4 in Captain Bendixen becoming a pilot. That's what
5 happens.

6 Q. Absolutely. No question, and so I appreciate
7 that.

8 And you would, of course, commend
9 Captain McIntyre in the same respect for --

10 A. Mm-hmm, yes.

11 Q. You would agree that during that process, that
12 interpersonal recruitment, it's critical for the person
13 in the mentor position to give candid and honest advice
14 with the person coming up; right? Whether this is an
15 organization they should want to join or not want to
16 join, honesty is a huge part of that trust relationship,
17 isn't it?

18 A. I don't think you have to be an expert to
19 answer that in the affirmative. I mean, you know,
20 that's human nature --

21 Q. Right. Thank you.

22 A. -- for us to --

23 Q. Perfect. Let's go back to Captain Bendixen's
24 testimony, SB-1T at Page 5, and it starts on Line 23 --
25 excuse me -- 22 through 26, and then we continue to

1 Page 6 at Lines 1 and 2.

2 I want to read you now sort of a counterpoint
3 from Captain Bendixen's testimony about her experience
4 now that she is a pilot and in that mentorship role.
5 She says: "On a personal level, I find it deeply
6 upsetting that at this time I cannot honestly and in
7 good conscience mentor and encourage an interested
8 female captain to pursue a career with Puget Sound
9 Pilots when I know full-well that the benefits of almost
10 any other pilotage district in the country are superior
11 to Puget Sound, and that for the first time in my and
12 most of my colleagues' professional maritime careers, we
13 will soon be entirely without funded medical benefits."

14 Now, Ms. Nalty, my question for you is this:
15 As a DEI expert who recognizes the importance of
16 personal reassurances to diverse candidates, don't you
17 find it incredibly disturbing that PSP's first female
18 pilot who believes that the organization is inclusive,
19 nevertheless, cannot in good conscience advise
20 up-and-coming female mariners to pursue a career with
21 PSP? Isn't that hugely problematic?

22 A. Can you ask the question again, please?

23 Q. Sure.

24 Ms. Nalty, as a DEI expert, who recognizes the
25 importance of personal reassurances to diverse

1 candidates, don't you find it incredibly disturbing that
2 PSP's first female pilot cannot, despite the fact that
3 she finds PSP an inclusive organization, nevertheless,
4 cannot in good conscience advise other female mariners
5 to pursue a career with PSP? Doesn't that disturb you?

6 A. You know, I don't know that I can say that it
7 disturbs me. I don't -- I don't know about the
8 foundation for her -- I don't know anything about the
9 medical benefits or any of the circumstances that she
10 finds herself in a situation where she feels that she
11 personally can't recommend or bring people in.

12 It -- I would wonder if that didn't go to
13 what -- I mean, I'm -- I'm confused about why she feels
14 included within the organization, but on the -- at the
15 same time, she doesn't feel like she can in good
16 conscience recruit people into the organization. I
17 just -- I find it confusing --

18 Q. Well, she tells you that.

19 A. -- more than anything.

20 Q. She tells you why, doesn't she? Because
21 compensation and benefits aren't competitive; isn't that
22 what she says?

23 A. Well, her previous -- the previous statements
24 that we were just talking about was, you know, she had a
25 personal experience with respect to, you know, not --

1 her pregnancy and her colleagues made her feel very
2 included, which is an indication of an inclusive
3 organization. But yet now, here, we have something
4 apparently oppositional to that, and so I -- I don't
5 know that I can comment on this specific situation,
6 because it is -- you've got two kind of diametrically
7 opposing things going on for her.

8 Q. Right. There are?

9 A. And so I don't -- I don't know that -- I don't
10 feel comfortable drawing a conclusion or saying that I
11 am personally upset or -- it's confusing to me why
12 there's this discrepancy.

13 Q. Okay. And just to be clear, I think I heard
14 you say earlier it's because you don't really know
15 anything about the compensation or benefits to form an
16 opinion; right? I mean, you would need to know more
17 about the situation, wouldn't you?

18 A. I don't even know if I knew more about the
19 compensation and benefits that I could answer your
20 specific question. You're -- because you're talking
21 about one single individual, and in part of her
22 testimony she's saying, well, I feel -- I feel included
23 by my colleagues, but then in another situation, she's
24 saying we aren't inclusive, so I -- I don't know.

25 Q. I understand.

1 A. Sorry I can't be more helpful.

2 Q. No, that's okay. Thank you, Ms. Nalty.

3 MR. BRICKENSTEIN: Could we please go to
4 KN Page 17, Lines 24 to 25?

5 Q. (By Mr. Brickenstein) Because this -- this
6 really brings us, I think, to the heart of our most
7 significant point of disagreement.

8 You say, at Page 17 of your testimony --
9 despite your confusion now, you say, quote: "I don't
10 believe it's necessary to increase compensation to
11 effectuate changes or that an increase in compensation
12 will increase or advance DEI."

13 Ms. Nalty, after our discussion we just had,
14 do you stand by that testimony? How can you stand by
15 that testimony?

16 A. Just a second. Let me read the question
17 again.

18 Q. Sure.

19 A. Should the commitment of the State to any of
20 the recommendations or actions be dependent on a
21 specific rate of compensation?

22 So I -- I didn't believe that the
23 recommendations or actions should be solely dependent on
24 compensation.

25 Q. Thank -- thank you, and we're going get to

1 that in a moment too, because I think there are a couple
2 instances in your testimony where what's fundamentally
3 at issue gets a little bit distorted, but we'll get
4 there in a second.

5 For now --

6 MS. DeLAPPE: Objection. If Counsel
7 could refrain, please, from commenting I would ask.

8 JUDGE HOWARD: I will -- I will grant the
9 objection again.

10 I also just want to raise a separate
11 concern for the clarity of the record that we're posing
12 one question to the witness at a time and not a long
13 question followed by a different short question. So
14 let's try to be mindful of that so the witness is --
15 we're clear on what -- which question the witness is
16 being asked to answer.

17 MR. BRICKENSTEIN: Thank you, your Honor.
18 I'll be mindful of that moving forward.

19 If we could please go back to SB-1T, at
20 Page 9, Lines 5 through 16?

21 Q. (By Mr. Brickenstein) And, Ms. Nalty, I'll give
22 you a moment to read this, but I'll just represent to
23 you that the gist of what Captain Bendixen is saying is
24 that based on her experience with PSP and its reputation
25 as an inclusive organization, she feels that it would be

1 much more successful at recruiting diverse candidates
2 and advancing its DEI objectives if compensation were
3 competitive.

4 And so my question for you is: Doesn't
5 Captain Bendixen's testimony contradict your position?

6 A. She has an opinion, and it may be different
7 from mine.

8 Q. Okay. Thank you.

9 Now, let's go back to Captain Dempsey's
10 testimony.

11 MR. BRICKENSTEIN: If you could go to
12 DDD-1T at Page 2, Line 16 through 20.

13 Q. (By Mr. Brickenstein) And Captain Dempsey
14 says -- and this is -- this is in rebuttal to your
15 testimony, Ms. Nalty. And she says, quote: "With all
16 due respect to Ms. Nalty's expertise in the DEI
17 field" --

18 MR. BRICKENSTEIN: Oh, I beg your pardon.
19 It's her rebuttal testimony. It's DDD-4T. Sorry about
20 that.

21 Q. (By Mr. Brickenstein) She says: "With all due
22 respect to Ms. Nalty's expertise in the DEI field, she
23 has no experience with the maritime industry or what
24 goes into a top mariner's decision-making process when
25 considering the potential career move from employed

1 captain to the pilotage profession."

2 And then if you go down to Page 3 of
3 Captain Dempsey's testimony, at Lines 2 through 13, she
4 goes on, and I'll skip ahead to the sentence that starts
5 with "in my opinion."

6 She says: "In my opinion, if PSP is to
7 attract a significant number of female and
8 underrepresented candidates to take the upcoming
9 pilotage exam, it is critical that the UTC not only
10 increase PSP's pay and benefits to a
11 nationally-competitive level, but resolve currently
12 contentious issues on a long-term basis."

13 So my -- my question for you, again,
14 Ms. Nalty, is: Doesn't Captain Dempsey's testimony also
15 contradict your position?

16 A. They have their opinion, and mine is based on
17 what I know from research studies and experience with a
18 wide variety of sectors and industries, because the
19 issues, especially around recruiting, are pretty
20 ubiquitous. There are many other types of organizations
21 and industries and sectors that also have, you know,
22 serious recruiting problems, and they can have their
23 opinion and I'm just offering mine.

24 Q. I appreciate that.

25 And at the beginning, if you'll recall, we had

1 a little colloquy where we discussed when you worked
2 with leaders, you don't prescribe, you know, a specific
3 course of action. You -- you agreed with me that it's
4 important to take into account the leaders within their
5 industry's expertise and valuable knowledge regarding
6 the particulars of their organization and sector. Do
7 you recall that?

8 A. I do recall that, and I do -- I -- that is the
9 general rule of thumb that I follow, but I do also bring
10 to their knowledge the research studies that show that
11 diverse candidates really do focus on much, much more
12 than compensation. So -- and that's what I was trying
13 to bring to this exercise is that understanding that
14 it's not just compensation.

15 Q. I understand. And that actually -- that
16 brings me to another -- to another point, because I
17 agree it's not just compensation.

18 MR. BRICKENSTEIN: If we could turn to
19 Ms. Nalty's testimony, KN-1T, Page 5 at Lines 17 through
20 18.

21 Q. (By Mr. Brickenstein) And you state, Ms. Nalty,
22 and this is in the summary of the purpose of your
23 testimony.

24 MR. BRICKENSTEIN: Well, Mr. Crandall, if
25 you could do a search for "I have never seen

1 compensation listed." I apologize. I have the wrong
2 citation.

3 CHAIR DANNER: Counsel, it's on Page 6,
4 Lines 2 and 3.

5 MR. BRICKENSTEIN: Okay. Thank you,
6 Commissioner.

7 Q. (By Mr. Brickenstein) You -- you say,
8 Ms. Nalty, quote: "I have never seen compensation
9 listed as a, quote, unquote, 'go-to strategy' for
10 increasing diversity, especially as a standalone
11 strategy."

12 And here's my -- my question for you,
13 Ms. Nalty: Doesn't that fundamentally mischaracterize
14 what's at issue here, this notion that compensation is a
15 standalone strategy?

16 A. I wasn't intending to characterize it as
17 anything. I was just simply trying to say that I hadn't
18 ever seen any research or run into any organizations
19 where the people who are in a majority group were trying
20 to leverage diversity by raising compensation
21 substantially.

22 Q. Okay. Because, Ms. Nalty, no one in this case
23 has ever suggested pursuing increasing compensation as a
24 standalone DEI strategy, have they?

25 A. Not that I know of.

1 Q. Okay. And we don't need to go through all the
2 evidence in this case regarding PSP's DEI work, but
3 wouldn't you agree that Captain Dempsey and
4 Captain Bendixen's and PSP's point is that they are
5 engaged in outreach, they're walking the walk on
6 inclusion, they're implementing DEI initiatives on
7 multiple fronts, and those efforts are being undermined
8 by a lack of competitive compensation and benefits?

9 A. I don't -- I'm not going to comment on what
10 their point is. I don't know about the compensation
11 situation. I -- you're asking me to agree with
12 something that is overbroad. If you could be more
13 specific.

14 Q. It's okay -- it's okay, Ms. Nalty. I'll move
15 on, and I just have a final point. You would agree,
16 wouldn't you, that DEI work requires a team effort and
17 that it starts with leaders and decision-makers and
18 persons in positions of power taking the lead and taking
19 bold steps that are necessary to move the ball forward;
20 correct?

21 A. I would agree with that.

22 Q. Okay. Now, I understand that you disagree
23 with -- you and Captain Dempsey and Captain Bendixen
24 have different views of the role of compensation and
25 promoting DEI, but just assume for the moment that

1 Captains Bendixen and Dempsey are correct. In that
2 instance, wouldn't you agree that this rate case, the
3 Commission has a unique and compelling opportunity to
4 position the Puget Sound Pilots as a leader in improving
5 diversity in the maritime sector, which is, I think we
6 all agree, deeply in need of these efforts?

7 A. I think the question is really, really broad.
8 If you could be more specific, that would be very
9 helpful.

10 Q. It's okay, Ms. Nalty. I don't have any
11 further questions for you. Thank you for your time
12 today.

13 JUDGE HOWARD: Do we have any redirect?

14 MS. DeLAPPE: Yes. Thank you,
15 your Honor.

16

17 REDIRECT EXAMINATION

18 BY MS. DeLAPPE

19 Q. Ms. Nalty, counsel asked you about your
20 experience in DEI consulting and he presented
21 Captain Dempsey's opinion that you have no experience
22 specifically with maritime pilots.

23 Could you give us some sense of the types of
24 industries and sectors that you have done DEI work with?

25 A. Yes. Thank you so much.

1 So, before 2013, I focused almost exclusively
2 on the legal industry and was working with law firms of
3 all sizes across the US and Canada, corporate law
4 departments for big and small companies, government law
5 offices, and nonprofit bar associations. When I started
6 my own consulting company in 2013, I began to interact
7 with clients from all kinds of sectors and industries.
8 And in the past five years, have had about 150 different
9 clients that I've worked with.

10 So this -- this, you know, let's talk about
11 government agencies. I've consulted with municipalities
12 like the suburban city council of a Midwest suburb;
13 Burbank Power and Water, which is a utilities provider
14 in California -- Burbank, California; state agencies
15 like the Colorado Attorney General's Office; and federal
16 government agencies, I have extensive experience with
17 federal government agencies like the Environmental
18 Protection Agency, the Western Area Power
19 Administration, Bureau of Land Management, et cetera;
20 corporations from the smallest family-owned
21 manufacturing company in the Midwest, all the way up to
22 major companies like Microsoft, Procter & Gamble, BNSF,
23 for example.

24 And then nonprofits, I just came back this
25 week from working with the National Dance Institute in

1 New Mexico. And I've worked with Laradon, which is a
2 nonprofit organization serving people with disabilities
3 here in the Denver area, which is where I'm located; and
4 the American Mountain Guide Association, which is
5 headquartered in Boulder, Colorado.

6 Q. Which of all of this experience would you say
7 is most like the PSP pilots from what you've observed?

8 A. You know, I found it very interesting the
9 similarities with the American Mountain Guide
10 Association. Mountain guides are working in very, very
11 dangerous circumstances, and so safety is a top concern
12 for them. And they go through a very rigorous training,
13 mentoring, sponsorship, testing-type of circumstance to
14 certify the mountain guides in their organization.

15 And I worked with them a few -- few years ago
16 because the profession, like the pilots, were dominated
17 by white men who really weren't assessing women, and
18 especially women of color, in the same way that they
19 would be potentially assessing other white men. So the
20 association recognized that and brought me in to do some
21 training on unconscious bias and to work with them to
22 show them how not just diversity is important, but
23 inclusiveness, which means addressing the bias that can
24 show up in all of the structures and processes of the
25 organization.

1 Q. And were they able to make progress in the
2 area of DEI during your work with them?

3 A. Yes. I was very encouraged. One of the
4 sessions that I led was at their national conference in
5 Salt Lake City a few years ago. I was brought in to
6 make a presentation on unconscious bias, and the -- my
7 co-presenter who was a very experienced mountain guide
8 from Canada had a lot of experience with cognitive
9 biases. And he and I made a presentation that was
10 really powerful, because I gave the workplace types of
11 examples and he gave the mountain guiding examples.

12 So they brought me in -- back in the next
13 year. That was so successful they brought me back in
14 the next year to lead a session on gender bias, and
15 people reported that they had a lot of really profound
16 a-ha moments as a result. And I later found out that a
17 female -- a female of color, an Asian female, who had
18 gone through the testing cycle and had been turned down,
19 had later then gone back through the testing cycle and
20 had been certified as a mountain guide, which, you know,
21 I see that as evidence of some progress within that
22 organization, so yeah.

23 Q. In your experience, do people in different
24 industries act differently around DEI issues?

25 A. No. These -- these issues, the problems that

1 people are facing, are really ubiquitous. Like, the --
2 I literally use the same types of training for people in
3 any kind of sector or industry because the fundamental
4 issues are all really the same.

5 Q. And would you --

6 A. I'm sorry.

7 Q. Go ahead.

8 A. Well, I customize it to speak to their
9 particular sector, industry, or, you know, whatever. I
10 mean, I spoke to the mountain guides, for example, a bit
11 differently than I did to the executive at
12 Procter & Gamble, but the foundational issues are all
13 really the same.

14 Q. And would you say that solutions are
15 essentially the same also?

16 A. Many of the solutions are the same. So when I
17 take people through this leadership training, when I
18 take leaders through this training, I show them all of
19 the options. And I actually use a maturity model to
20 show them, you know, how, you know, there are some
21 efforts which PSP has undertaken to begin the process of
22 becoming a more mature organization in terms of
23 advancing DEI, but I also exposed them to the additional
24 things that they could be doing to become more advanced
25 or mature, which are signaled to candidates. Like, if

1 candidates see the minimum that's being undertaken, then
2 they know that it -- that it may just be performative.

3 So this is really important. After
4 George Floyd was killed in 2020, lots of organizations
5 came out with diversity statements and a lot of money
6 was thrown at, you know, diversity, in general, and
7 diversity organizations. But what people in
8 underrepresented groups, especially people of color, are
9 now beginning to understand, they're becoming much more
10 jaded because a lot of that was just performative.

11 Like, people -- people got better at talking
12 the talk and putting in place a few initial types of
13 entry-level DEI things, but then there really was -- you
14 know, they really weren't walking the talk or really
15 deeply moving to really move the needle in terms of the
16 culture, the structure of the organization, and people's
17 behaviors.

18 Q. So picking up on that maturity model, and also
19 counsel asked you several questions based on
20 Captain Bendixen's testimony about her assessment of how
21 PSP is doing in inclusiveness, what is your observation
22 of how mature PSP is as an organization in the area of
23 DEI?

24 A. So from the documents that I've reviewed,
25 they're off to a good start. I don't want anyone to

1 think that I'm critical of the efforts that have been
2 made, but they're really at just the beginning stages.

3 And so the maturity model that I use is of
4 four levels. Level 1 is really just a reactive
5 organization and just doing the bare minimum that's
6 required by law or regulation, like not really -- not
7 really focused on diversifying at all.

8 Level 2, which I -- from my personal
9 assessment, it appears that PSP is entering into a level
10 2, which is, you know, understanding that diversity is
11 important and wanting greater diversity, but making the
12 fundamental error that it's mostly just about recruiting
13 and getting people into the organization. That's where
14 most organizations have fallen down.

15 Because unless they have inclusion, which is a
16 Level 3 activity, which is led by leaders, their efforts
17 to try to recruit will never stick. It's not
18 sustainable unless you fundamentally change the culture
19 of the organization to be more inclusive of just white
20 women, to be inclusive of people in other demographic
21 groups. You change the structures, so de-biasing
22 structures, adding -- I mean, no doubt about it, adding
23 the maternity policy, kudos to PSP, but, you know,
24 that -- that can't be just the only thing that changes,
25 right?

1 So it's structures, behaviors, so are the
2 other pilots mentoring people who are different from
3 them? That would be a clear indicator of whether you're
4 actually going to be successful in diversifying that
5 pipeline. I don't know.

6 So structures, behaviors, and culture, and
7 that requires the deep commitment and much more actions
8 being taken not just by, you know, the -- you know, one
9 or two people here and there, but systemically embedding
10 these practices within the organization. That only
11 happens with a Level 3 organization. And Level 4 is a
12 fully-inclusive organization where you see diverse
13 people from underrepresented backgrounds throughout the
14 organization, within leadership ranks, for example.

15 So they're -- they're off to a good start.
16 I'm not saying that they're not, but there's a long ways
17 to go, and simply recruiting people into the
18 organization has never worked as a strategy for -- for
19 organizations.

20 Q. And you'll recall that counsel asked you
21 several questions involving compensation. Is
22 compensation, in your experience, ever a DEI issue?

23 A. I've never seen it as a DEI issue before,
24 apart from pay equity issues. Pay equity is not an
25 issue in this case, but I have never seen compensation

1 postured in this way in my over-two decades of
2 experience.

3 Q. And so what -- when you say "in this way," you
4 mean DEI used as a rationale for paying everyone in the
5 organization more?

6 A. Yes.

7 Q. Do you have any concerns about this rationale
8 in PSP's case here with respect to PSP's ability to
9 recruit more diverse candidates?

10 A. I'm actually really concerned for the
11 organization on this, especially because, you know,
12 the -- I referenced earlier the disgust about
13 performative efforts that are being made in
14 organizations, that if the word got out that a group of
15 white people wanted a pay raise on the pretext of
16 diversity, using diversity to justify a pay raise for a
17 majority-dominated organization, if that got out, I'm
18 just -- I'm just worried about how people would take
19 that, especially in this context of being so upset that,
20 you know, organizations say they want to do the right
21 thing and have all these wonderful diversity statements,
22 but then nothing ever actually changes in organizations.

23 Q. In the cross-exhibits that PSP filed, did you
24 find further support for what you have observed about
25 how potential job candidates view compensation?

1 A. I'm sorry, Ms. DeLappe. Can you restate that
2 question?

3 Q. Certainly.

4 So you've reviewed the cross-exhibits that PSP
5 filed for you? There were some articles?

6 A. Yes, yes. There was the research study, yes,
7 that I actually had referenced in my testimony, yes.

8 Q. And did you find further support for the
9 position that you stated about how potential job
10 candidates view compensation as a factor or not?

11 A. Yes. Well, there were two significant
12 findings from that research study, which the working
13 paper was published last year about a year ago. The
14 first significant finding was that very large
15 percentages of people are interested in organizations
16 that have greater diversity, and that the -- in the
17 experiment that was done, people were more inclined to
18 clickthrough on a job posting if there was information
19 that indicated that the organization offering the job
20 had greater diversity. So, I mean, we know that for
21 many, many studies. The second -- and along with that,
22 women and people of color had higher rates of
23 clickthroughs as demonstrating some interest in the
24 organization if the diversity score was higher.

25 The second finding was when they went and they

1 spoke with people about this and interviewed them, they
2 found that the people who were interested in potentially
3 applying for positions had a willingness to pay -- it's
4 called "WTP." They would accept less compensation to be
5 able to work for an organization that they thought was
6 more advanced in DEI. Because if you're working in an
7 organization that is not inclusive of you and you're
8 subjected to micro-aggressions and all of the inequities
9 that can happen in an organization that's not very
10 advanced in DEI, no amount of money is worth that kind
11 of experience. That -- and I don't even say that as an
12 expert. I think that human beings understand that.

13 Q. Thank you. I have no further questions,
14 Ms. Nalty.

15 JUDGE HOWARD: Do we have any questions
16 from the bench for this witness?

17 CHAIR DANNER: No, your Honor.

18 COMMISSIONER DOUMIT: No thanks,
19 your Honor.

20 JUDGE HOWARD: Thank you, Ms. Nalty, for
21 your testimony.

22 THE WITNESS: Thank you all.

23 JUDGE HOWARD: You are excused from the
24 remainder of the hearing.

25 THE WITNESS: Thank you so much.

1 JUDGE HOWARD: I see it is 11:37. I
2 appreciate her staying a few minutes over if that was
3 inconvenient for her.

4 Let's confer. I think we can -- do we
5 want to try to fit in a short witness before lunch or do
6 we want to break for lunch now?

7 MR. HAGLUND: Well, your Honor, we have
8 just two 15-minute witnesses. We were -- one of them
9 has to catch a plane at 2:00 from -- I don't know where
10 in Seattle -- at SeaTac.

11 Could we -- and I'm not sure whether
12 Ms. DeLappe has very much for Ms. Norris. Do you -- do
13 you have 15 full minutes for Jessica Norris,
14 Ms. DeLappe?

15 MS. DeLAPPE: That depends partly on the
16 witness, but I am planning on 15 minutes. Thank you.
17 And I'm available any time.

18 JUDGE HOWARD: Then would it be suitable
19 to take Norris?

20 MR. HAGLUND: And I guess we'd like to
21 get Norris and Eriksen in before lunch if that's okay
22 with you, your Honor. I don't expect much redirect.

23 JUDGE HOWARD: Why don't we -- why don't
24 we start with Norris and see where we're at? Does that
25 sound fine to everyone?

1 MR. HAGLUND: Well, my only concern is
2 maybe we should go with Eriksen. He's the one that's
3 got the plane to catch.

4 JUDGE HOWARD: Okay.

5 MR. HAGLUND: Let's go with Mr. Eriksen.

6 JUDGE HOWARD: All right. Let's move to
7 Ken Eriksen.

8 All right. Mr. Eriksen, if you could
9 please raise your right hand and I'll swear you in.

10 Do you swear or affirm that the testimony
11 you give today is the truth, the whole truth, and
12 nothing but the truth?

13 THE WITNESS: Yes.

14 JUDGE HOWARD: All right. Thank you.

15 Mr. Haglund, could you please introduce
16 the witness?

17 MR. HAGLUND: Yes.

18 Mr. Eriksen, you've been -- who are you
19 employed by now and what's your position?

20 THE WITNESS: I'm employed by S&P Global
21 and I'm the Senior Vice President.

22 MR. HAGLUND: And do you have any
23 connections to the Pacific Northwest?

24 THE WITNESS: Yes, I did grow up here in
25 the Pacific Northwest.

1 MR. HAGLUND: Did you prepare original
2 and rebuttal testimony in this rate case?

3 THE WITNESS: Yes, I did.

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

6 THE WITNESS: Yes, it is.

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

9 JUDGE HOWARD: All right. Please
10 proceed.

11

12 CROSS-EXAMINATION

13 BY MS. DeLAPPE

14 Q. Good morning, Mr. Eriksen.

15 A. Good morning, Ms. DeLappe.

16 Q. In your testimony, you include comments
17 regarding ship traffic volatility; correct?

18 A. Yes.

19 Q. But your analysis -- your analysis did not
20 develop a metric for the application of known
21 probability of traffic volatility for the Puget Sound,
22 did it?

23 A. We -- what I looked at was the different types
24 of traffic. It's a very diverse traffic on the Puget
25 Sound. And, certainly, I did if you look at grain

1 movements as one example where we're looking at the
2 percent change or the change from one period to the
3 next, and there certainly was a great amount of movement
4 and volatility from the one period to another that can
5 be witnessed.

6 Q. Mr. Eriksen, I don't believe that responded to
7 my question. If you could please go to Exhibit KAE-6X,
8 and specifically -- so those are data requests to you.

9 If you could then turn to Page 23 and let me
10 know when you're there.

11 A. Okay. I'm there.

12 Q. So that's Data Request No. 426, and do you see
13 your response there? Quote: "I have not attempted to
14 develop a numeric value for," quote, "the norm -- the
15 known probability of traffic volatility which was not
16 included in the scope of work under IHS Markit's
17 contract with PSP."

18 Do you stand by that answer?

19 A. Yes, I do.

20 Q. In your section on ship traffic volatility,
21 you provided multiple charts and graphs related to
22 different commodities, shipping volumes, and other types
23 of trade-related statistics; right?

24 A. Yes. I used the -- a number from our company
25 with S&P Global, and then previously IHS Markit, and the

1 great amount of data that we were able to pull together
2 from a rich database and a great resource.

3 Q. As your -- as a result of your review of these
4 traffic patterns, you concluded it is impossible to
5 predict vessel traffic; right?

6 A. The ability to predict a specific traffic by
7 vessel type and size and dimensions and such, that is
8 very difficult to do.

9 Q. And, in fact, you said -- if you could please
10 turn to your testimony at Page 16 and look at Line 12
11 through 14. Could you just confirm, you did say it was
12 impossible, didn't you?

13 A. Yes. Because of the various things I just
14 described with the different types of vessels and the
15 activities that take place with the classes and such.

16 Q. So, Mr. Eriksen, I'm just confirming one part
17 of that. You don't have to repeat the whole thing.

18 In this discovery -- in discovery, you
19 explained that it is impossible to predict this with a
20 high degree of certainty. Do you recall that?

21 A. Yes.

22 Q. That does not mean that vessel traffic
23 forecasts are all together impossible to -- for
24 predictions; right?

25 A. Predicting a big picture and it's something

1 that we do regularly, and we're looking at forecasts
2 based on a number of factors. But to start to break it
3 down by individual vessels or types, the size of a class
4 of vessels or such, that's where it gets to be very
5 problematic then.

6 Q. Would you please turn back to KAE-6X,
7 Page 22 -- 21, excuse me. So that's Data Request 422.

8 A. Okay.

9 Q. And if you look at the part -- that request
10 is -- all of it is asking about past vessel traffic,
11 using past vessel traffic, and your response is that
12 past vessel traffic is an appropriate consideration for
13 the various decision-makers in that data request;
14 correct?

15 A. That's correct.

16 Q. And turning to the next page, Page 22, would
17 you agree with me that long-term cargo forecasts are
18 also a valuable guide?

19 A. Yes, they are. Especially using a number of
20 tools and resources, especially around using scenario
21 analysis, high/low base activity.

22 Q. Did PSP engage IHS Markit to conduct any
23 forecasts or projections for the Puget Sound in this
24 case?

25 A. No long-term forecasts were asked of us to

1 perform for PSP.

2 Q. Let's go back to your testimony, and this time
3 I'll look at the next page, Page 17, starting at the top
4 of that page.

5 In your initial testimony, you have a section
6 here entitled "Substantial Increases in Ocean Freight
7 Rates"; right?

8 A. Just one -- just one second. Page 17,
9 correct?

10 Q. Yes.

11 A. Okay. We're there.

12 Q. And so that's the -- this section is entitled
13 "Substantial Increases in Ocean Freight Rates." In that
14 section, you show data about freight rates; right?

15 A. Yes.

16 Q. There is no analysis of that data, is there?

17 A. Other than describing what has transpired in
18 the freight rates and the markets that have taken place,
19 that is what I characterized and discussed about what
20 has transpired so there is analysis there.

21 Q. Analysis in terms of a summary of the data;
22 correct?

23 A. That's correct, looking at what has taken
24 place with the freight rates over that time frame.

25 Q. And you don't provide any projections about

1 freight rates, do you?

2 A. Not in this particular example right here.

3 Q. Not in this engagement, you mean?

4 A. Not -- that's correct.

5 Q. Have those -- have the freight rates that you
6 presented here, have they changed significantly since
7 the filing of this rate case?

8 A. There have been changes in freight rates as
9 there is on a regular and ongoing basis.

10 Q. And, in fact, would you agree with me that
11 your firm just published, three days ago, an article in
12 the Journal of Commerce about, quote, "plunging
13 profitability," end quote, this year for global
14 container carriers?

15 A. I wouldn't -- I'm not familiar with that
16 article. That was three days ago, so you must see --
17 know something I've not perhaps seen.

18 Q. Are you familiar with the Journal of Commerce
19 as part of what's owned by your firm?

20 A. Yes.

21 Q. And are you not familiar then with the article
22 from April 3, 2023, titled "Shipper savings to rocket in
23 2023 at expense of carrier profits"?

24 A. I would have to see that article in front of
25 me if you have that.

1 Q. So you don't necessarily follow the news that
2 your firm puts out on that topic?

3 A. I do follow the news that our company
4 publishes. We do publish quite a bit. We have 35,000
5 people around the world in many countries and --

6 Q. My question --

7 A. -- I can't follow that and everything.

8 MR. HAGLUND: Your Honor, I object to
9 Ms. DeLappe interrupting when he's just making his
10 explanation about why he may not have seen that article.

11 MS. DeLAPPE: And it was unintentional,
12 your Honor. I did not mean to step on his lines.

13 JUDGE HOWARD: Please proceed.

14 MS. DeLAPPE: Thank you.

15 THE WITNESS: Thank you, sir.

16 And so when I -- when I look at the
17 Journal of Commerce, I do look at that regularly, among
18 many other locations of our services that we provide for
19 our customers in an ongoing and regular basis.

20 Q. (By Ms. DeLappe) And, Mr. Eriksen, if you'll
21 recall my question was: On this topic, do you follow
22 the articles that your firm publishes on the specific
23 topic of freight rates?

24 A. I do.

25 Q. And so -- but that article about shippers,

1 that there's plunging profitability for global container
2 carriers, you don't recall seeing that come out this
3 week?

4 A. I don't see it in front of me to know exactly.
5 I'd have to look at it to verify.

6 Q. You don't have any basis to believe the data
7 in your testimony applies to current or future freight
8 rates, do you?

9 A. Well, they're current through the time that I
10 published my testimony and prepared it and submitted it
11 and was not asked to forecast freight rates for this
12 particular case.

13 Q. So as we've discussed, freight rates have
14 changed quite a bit. Are you positing that your -- what
15 you wrote here in the testimony that's in front of us,
16 that that testimony applies to current or future date
17 freight rates?

18 A. That was at the time of submission. I believe
19 this was in July of 2022, so it would've been through
20 that time and, certainly, there has been changes since
21 then.

22 Q. Again, if you would please answer the
23 question.

24 Is it your position that your testimony
25 applies to the freight rates as they are now, today, and

1 in the future, yes or no?

2 A. The -- my testimony applies to what I've been
3 asked to contribute and to respond to questions and what
4 I have submitted in testimony.

5 Q. And so that applied to the freight rates only
6 as of that time; correct?

7 A. That's what I was asked to address for this
8 testimony.

9 Q. If we could please turn to Page 5 of your
10 original testimony.

11 A. I'm there.

12 Q. Thank you.

13 You'll see there that there are some charts
14 and that at the bottom they are copyrighted IHS Markit.

15 A. Yes.

16 Q. And these ones say, "Source: Puget Sound
17 Pilots"; right?

18 A. Yes.

19 Q. And, now, if you could move -- go to the
20 charts on Page 32 through -- there are some on 32 and
21 several pages thereafter.

22 Do you see those tables on Page 32 of your
23 testimony?

24 A. I can see charts on those pages.

25 Q. And at the bottom, it's copyrighted IHS

1 Markit, and source IHS Markit; correct?

2 A. Yes.

3 Q. If you could turn now to your rebuttal
4 testimony, Exhibit KAE-4T at Page 2.

5 A. Okay. We're there.

6 Q. And do you also see a chart -- charts there?
7 On Pages 2 through 11, you'll see some charts.

8 A. Yes.

9 Q. And they're showing -- what source do they
10 show?

11 A. IHS Markit, and that's inadvertent. That was
12 actually PSP data that we used.

13 Q. The source for the data in all of your charts
14 was PSP, wasn't it?

15 A. Not all charts, but some of the charts were
16 PSP data.

17 Q. If you could turn to -- back to
18 Exhibit KAE-6X, and this time turn to Page 4.

19 A. I'm there.

20 Q. And this request, Number 392, there were
21 requests about specific charts that you had, and you
22 said there the data was sourced from Puget Sound Pilots
23 and you said the same on the next page -- several pages
24 following through Page 8; correct?

25 A. Yes. That was in reference to an Excel file

1 that we had used and submitted.

2 Q. So PMSA brought this to your attention, this
3 discrepancy in the source information, in data requests
4 well before you filed your rebuttal testimony; right?

5 A. Yes.

6 Q. But you did not correct the discrepancy?

7 A. That would appear so. That's an oversight on
8 that.

9 Q. And, in fact, in your rebuttal testimony, you
10 have additional charts that have that same type of
11 mistake?

12 A. Yes.

13 Q. In your initial testimony, original testimony
14 at Page 32, you're showing data there from various
15 ports; right?

16 A. I'm sorry. Which -- repeat that again?
17 Which?

18 Q. On Page 32 of your original testimony.

19 A. Yes.

20 Q. You're showing data from various ports?

21 A. That's correct. Pilot groups.

22 Q. Okay. And so on -- I see there, pilot group,
23 yeah.

24 And so on what basis did you conclude that
25 this -- that these pilot groups were the right ones to

1 use for your analysis?

2 A. This was information from PSP, and this was
3 compiled through a number -- through their efforts, I
4 understand, of invoices of actual activity for different
5 types of vessels.

6 Q. And so you didn't select which pilot groups to
7 use?

8 A. Those were prepared -- those were made
9 available, and so I used what was available.

10 Q. Are you familiar with data that
11 Captain Carlson and Mr. Lough have submitted in this
12 case regarding various pilotage grounds?

13 A. I understand there's been probably some
14 submitted, but I can't say that I'm completely familiar
15 without reference to it.

16 Q. So have you looked at the lists of pilotage
17 grounds or ports for those other two witnesses?

18 A. I would have to see what you're referring to
19 just to -- just to confirm.

20 Q. Certainly. If you want to turn to
21 Exhibit DL-6 for Mr. Lough's and to Exhibit IC-14 for
22 Captain Carlson's. You'll see a list of other pilotage
23 grounds, and if you could just, in looking at them,
24 confirm for me that they are fundamentally different
25 from the selection that you have in your tables.

1 A. There are similarities and there are some
2 differences, yes.

3 Q. And you don't have any idea why there are
4 differences, do you?

5 A. No, I do not.

6 MS. DeLAPPE: I have no further
7 questions. Thank you.

8 JUDGE HOWARD: Any redirect?

9 MR. HAGLUND: Yes, your Honor.

10

11

REDIRECT EXAMINATION

12

BY MR. HAGLUND

13

Q. Now, Mr. Eriksen, let's talk about the charts

14

that -- let's pull up the charts on your original

15

testimony that start on Page 32. Is it -- if you go

16

to -- actually, let's go to Page 31, the page before

17

those charts start.

18

This is KAE-1, Page 31.

19

A. Okay. Yes.

20

Q. And do you see the question there: "Did you

21

prepare a comparison of PSP's proposed pilotage rates in

22

this rate case to the existing rates charged to specific

23

vessels in five ship type classes in the major port

24

clusters on the west coast?"

25

A. Yes.

1 Q. And as you -- could you explain why the
2 comparison was made to major ports on the west coast?

3 A. The comparison was to these major ports on the
4 west coast because there's where this business is
5 operated. This is where the pilot group is functioning,
6 and there was information available through the pilot --
7 PSP on different vessel types for these different ports.

8 For example, the Columbia River Bar and the
9 Columbia River Pilots was a very good example to use and
10 that was a major port cluster that we could evaluate.

11 Similar, for other port ranges, as well, that are within
12 jurisdiction, if you will, of the west coast.

13 Similarly, we had information that was made available to
14 us for British Columbia, and that gave us a comparable
15 look at what was within these areas that the Puget Sound
16 Pilots would have activity to work vessels and for the
17 different types of vessels that access the ports,
18 whether it's for different types of service or different
19 types of business and different types of commodities.

20 Q. And in your testimony, did you address the
21 nature of the competition that occurs between ports?

22 A. Yes, and from that information --

23 MS. DeLAPPE: I would object. That is
24 not part of what I discussed in cross at all.

25 MR. HAGLUND: Your Honor, she took

1 very -- a select number of questions that relate to
2 these charts, which were an effort to convey information
3 within the relevant area of competition on west coast
4 ports. And -- and we're entitled, I think, to make sure
5 that the record is complete and that the narrow
6 questions asked on this broader topic get fully vetted
7 in this proceeding.

8 JUDGE HOWARD: I'm -- I'm persuaded that
9 PMSA did raise the issue why these ports were selected,
10 at least to a degree, and so I will allow some questions
11 on this.

12 Q. (By Mr. Haglund) So do you recall the question?

13 A. Yeah. In looking at the different metrics, I
14 think, along the lines -- along those lines,
15 Mr. Haglund.

16 Q. Let me rephrase the question.

17 What's your understanding about why the west
18 coast ports were selected for this Pilotage B Cost
19 Comparison to PSP's proposed rates?

20 A. There's similarities, and there's certainly
21 some competitive pressures on the system there. And the
22 PSP, from what -- the information we received and looked
23 at and analyzed, that I looked at, were that they were
24 lower fees and fares for the PSP.

25 Not only that, when I looked at that and

1 assessed it on different metrics, whether it was on a
2 per mile or per hour, or even on some distances, very
3 competitive. And, in fact, the PSP was much lower and
4 their rates were such in a position that were very
5 important for us to look at these different regions or
6 these different major pilot groups on the west coast
7 that gave some comparability to address things around
8 why would a vessel go to one place or another. And it
9 wasn't so much about the pilot rates as much as about
10 what's available for commerce to take place.

11 Q. So let's -- let me ask you some questions
12 about the specific charts Ms. DeLappe referenced.

13 At the bottom of Page 32 --

14 MS. DeLAPPE: Objection, your Honor. I
15 only asked about the source information, and every time
16 counsel for PSP wants to then dig into testimony about
17 all the underlying data in charts. My -- my questions
18 were very narrow.

19 JUDGE HOWARD: I think -- I think it was
20 fair to -- for Mr. Haglund to do a bit of a redirect on
21 the issue of why these pilot groups were chosen, but I
22 don't think we've opened it up to redirect in detail
23 into the impacts of these different fees by pilot group
24 on port competitiveness. So some of these distinctions
25 are a little fine to make, but I think that that's in

1 the interest of fairness.

2 MR. HAGLUND: Okay. I'll move on,
3 your Honor. Thank you.

4 Q. (By Mr. Haglund) You were asked questions about
5 freight rates, and if we could call up the chart that is
6 on page -- Page 18 of KAE-1. You were asked questions
7 about this chart.

8 This was prepared as part of your original
9 testimony; is that right?

10 A. Yes, that's correct.

11 Q. And it carried through February of 2022?

12 A. Yes, that's correct.

13 Q. Do you recall that PMSA asked you, in the data
14 request, to provide an updated chart in early this year
15 and did you do so?

16 A. Yes, they did, and yes, we -- I provided that.

17 Q. And it showed the accurate projection of -- or
18 history of rates going down in the last six months?

19 A. That's correct. And, in particular, on this
20 chart here, this is an export move. This is moving from
21 the US West Coast to China, and quite frankly, this rate
22 didn't correct as much as some other freight rates, but
23 this one remained pretty high that we would see relative
24 to history.

25 Q. And you were asked some questions about

1 volatility and the reference was made to the chart on
2 Page 5 of this original testimony, if we could go to
3 that.

4 With respect to the Puget Sound mix of
5 traffic, based upon your background and experience,
6 Mr. Eriksen, how would you characterize its diversity?

7 A. It's very diverse. Obviously, from these
8 charts here, you can see from, especially the top chart
9 on total assignments of looking at container and tanker,
10 plus bulker, represent more than 80 percent of the
11 volume -- number of assignments that the pilots have.

12 When I look at the diversity of these vessels,
13 in particular, on the container you see different size
14 trends taking place where the ships are getting larger
15 or there's larger ships accessing the Puget Sound
16 pilotage grounds. Similarly, on the bulker side, what
17 we're seeing is that the bulkers are actually getting
18 loaded with more commodity volume at a higher level, and
19 certainly the diversity's very unique in that regard in
20 providing a very competitive opportunity for shippers to
21 ship through the Pacific Northwest.

22 Q. And --

23 A. Puget Sound, pardon me.

24 Q. You were asked some questions about
25 volatility, and what is your testimony regarding the --

1 well, let me ask it this way.

2 Does the diversity of the traffic volume in
3 Puget Sound increase or decrease the volatile character
4 of traffic -- of year-end traffic figures?

5 A. It does, and there's a number of things that
6 drive the changes from one year to next, from one period
7 to the next, that are very important. And they're
8 global in nature, local as well, that we look at the
9 trade and economic flows to the United States and to the
10 world.

11 Q. So I think you missed part of the question.

12 In -- what is your opinion about the impact of
13 diversity? Does it -- in traffic, does it increase or
14 decrease the volatility that you described exists in
15 this pilotage district?

16 A. I think it increases some of the volatility.

17 Q. No further questions.

18 JUDGE HOWARD: Do we have any questions
19 from the bench?

20 COMMISSIONER DOUMIT: No, your Honor.

21 CHAIR DANNER: No, your Honor.

22 COMMISSIONER RENDAHL: No, your Honor.

23 JUDGE HOWARD: All right. Hearing none,
24 thank you for your testimony, Mr. Eriksen.

25 THE WITNESS: Thank you, your Honor.

1 JUDGE HOWARD: Thank you.

2 All right. With that, Mr. Haglund, I
3 believe we discussed the possibility of calling
4 Ms. Norris. I think, though, it might be best to break
5 for lunch first. Are you agreeable to that?

6 MR. HAGLUND: Yes, your Honor.

7 JUDGE HOWARD: All right. Let's take a
8 45-minute lunch and let's resume at 12:50.

9 All right. We are off the record.

10 (A break was taken from
11 12:05 p.m. to 12:52 p.m.)

12 JUDGE HOWARD: All right. Let's get back
13 on the record. We're returning after lunch. It's
14 12:53 p.m. We're resuming with PSP's witness,
15 Jessica Norris.

16 Ms. Norris, would you please raise your
17 right hand and I'll swear you in?

18 THE WITNESS: Yes.

19 JUDGE HOWARD: Do you swear or affirm
20 that the testimony you give today is the truth, the
21 whole truth, and nothing but the truth?

22 THE WITNESS: Yes.

23 JUDGE HOWARD: All right. Thank you.

24 Mr. Haglund, please -- could you please
25 introduce the witness?

1 MR. HAGLUND: Yes.

2 Ms. Norris, what is your position?

3 THE WITNESS: I'm a partner at
4 Shannon & Associates.

5 MR. HAGLUND: And how long have you
6 served as the lead auditor for PSP in connection with
7 the preparation of their annual financial statements and
8 audit?

9 THE WITNESS: I have been on the audit
10 for Puget Sound Pilots, I believe, 16 years, and I've
11 been the signing partner for three.

12 MR. HAGLUND: Did you prepare original
13 and rebuttal testimony in this case?

14 THE WITNESS: Yes.

15 MR. HAGLUND: Is it true and accurate to
16 the best of your knowledge?

17 THE WITNESS: Yes.

18 MR. HAGLUND: I tender the witness for
19 cross.

20 JUDGE HOWARD: All right. Thank you.
21 Ms. DeLappe, you may proceed.

22 MS. DeLAPPE: Thank you, your Honor.

23

24 CROSS-EXAMINATION

25

1 BY MS. DeLAPPE

2 Q. And good afternoon, Ms. Norris.

3 A. Good afternoon.

4 Q. Could you please turn to Exhibit JJN-05? And
5 if you could just confirm this information at this
6 exhibit's about PSP's 2022 draft audit financials?

7 A. Yes.

8 Q. Okay. Thank you.

9 And in Exhibit JJN-7 -- and you don't have to
10 turn to that, but that was also submitted by you. It's
11 PSP's 2022 audited financial statement; right?

12 A. Yes.

13 JUDGE HOWARD: Ms. DeLappe, I believe
14 JJN-6 and 7 were rejected.

15 MS. DeLAPPE: Oh, thank you.

16 Q. (By Ms. DeLappe) And for purposes just of your
17 testimony, could you please, Ms. Norris, just confirm
18 that you -- that both of those documents were PSP's
19 filing of 2022 financial information?

20 A. I just saw the cover page of that last one,
21 but, yes.

22 Q. Thank you.

23 And did you hear this morning, Mr. Burton's
24 testimony?

25 A. I did.

1 Q. And did you hear him testify that -- I'll
2 summarize in my own words -- that withholding
3 information in discovery about 2022 was proper because
4 the test year at issue in this case is 2021?

5 A. I did hear that.

6 Q. Do you perceive a conflict between your
7 filing 2022 financial information and Mr. Burton's
8 position?

9 A. I don't have any comment on that. I was just
10 asked to file it, and I did not prepare the test year
11 information.

12 Q. I have some questions for you about
13 Exhibit JJN-05. And if you look at Page 1, including
14 the footnote with the asterisk, do you see there that
15 that -- it says the active roster for the number of
16 pilots -- right? -- was 56 and 51 pilots at
17 December 31, 2022, and 2021?

18 A. Yes.

19 Q. Based upon the days of duty, the 2022 working
20 pilot roster averaged 52.5 pilots as compared with 52.9
21 pilots in 2021?

22 A. Yes.

23 Q. So from Mr. Burton's exhibits, are you aware
24 that he concluded -- he included -- and I can tell you
25 the exhibit I'm referring to is Exhibit WTB-20X -- that

1 he included the December 15, 2022, roster from the BPC
2 coinciding with the -- their last meeting of 2022.

3 And if you could go ahead and turn to
4 Exhibit WTB-20X, do you agree with me, once you get
5 there, that that shows 53 licensed pilots at the end
6 of 2022?

7 A. Is there a count on here?

8 Q. Go ahead and count, please.

9 A. Yeah, I counted 53.

10 Q. And so I was -- I would like to talk a little
11 bit about why the PSP financials show 56 pilots for as
12 of the end of 2022 when this roster shows 53 licensed
13 pilots. Is that because there are three pilots who were
14 burning comp days after they turned in their licenses to
15 the BPC?

16 A. That's a possible reason. I don't know where
17 this list is compiled from. This is the first time I've
18 seen this list. Our list comes from the amount of
19 pilots on distribution --

20 Q. Do you know --

21 A. -- on the distribution --

22 Q. -- if any -- go ahead.

23 A. On the distribution report.

24 Q. And so do you know anything else that might
25 account for the discrepancy of three pilots between the

1 PSP financials and the Board of Pilotage Commissioners'
2 records for 2022?

3 A. There could be timing of new pilots or retired
4 pilots from the date this was prepared and the date that
5 I pulled mine.

6 Q. So the date that is in your footnote is
7 December 31, 2022; right?

8 A. Correct.

9 Q. And the date on this document is
10 December 15, 2022; right?

11 A. Correct.

12 Q. So do you think the most likely reason would
13 be the burning of comp days after pilots had turned in
14 their licenses for the --

15 A. Again, I don't -- I don't know what was used
16 to accumulate this information on where the licensed
17 pilots, you know, came from, so I don't really have any
18 comment on where this information comes from.

19 Q. Okay. So earlier, just a moment ago, in your
20 testimony, you said it might be a situation of burning
21 comp days after pilots turned in their license.

22 So if you could just answer for me this: If
23 PSP continues to pay pilots as if they are licensed
24 after they are no longer licensed by the State and they
25 cannot provide service to vessels, are you aware of

1 whether that sometimes occurs?

2 A. I think that sometimes occurs, yes.

3 Q. Could you turn to Exhibit IC-14? And that's a
4 spreadsheet that was prepared -- submitted by
5 Captain Carlson in his rebuttal. Let me know when
6 you're there.

7 A. I'm there.

8 Q. So you see in the tab for 2022, the number of
9 pilots that he has for Puget Sound? That's in Column D
10 on Line 17.

11 A. Yes.

12 Q. And what's that number?

13 A. 48.5.

14 Q. 48.5, and your Exhibit JJN-05, states that
15 the 2022 working pilot roster averaged 52.5 pilots;
16 right?

17 A. Yes.

18 Q. Do you know what would account for the
19 discrepancy of about four pilots?

20 A. I don't know how this information was
21 prepared. Our formula is to take the number of duty
22 days divided by the days in the year.

23 Q. Let's turn now to Exhibit JJN-8X. And you'll
24 recognize, I think, that these are data requests that
25 were addressed to you.

1 A. Yes.

2 Q. And if you could turn to Page 2. That's PMSA
3 Data Request No. 164.

4 Am I correct in understanding, from your
5 response here, that if a pilot retires without standing
6 callback days, the pilot just stays on the roster until
7 all their accumulated callback days have been burned?

8 A. Can you rephrase the first part of that
9 question?

10 Q. So if a pilot retires without standing
11 callback days, the pilot stays on the roster until all
12 their accumulated callback days have been burned; is
13 that right?

14 A. Yes.

15 Q. Could you please turn to Page 9 of this
16 exhibit and answer this for me: There is no specific
17 comp day accounting by individual in the schedule of
18 distribution of pilotage revenues; right?

19 A. That is accurate.

20 Q. And individuals cannot receive specific comp
21 day cash payments; right?

22 A. That's correct.

23 Q. So is the only way that pilots can get paid
24 for a comp day through a credit of a day of service that
25 they do not actually work?

1 A. I'm not sure I understand the question.

2 Q. I'll repeat it.

3 So the only way that pilots can get paid for a
4 comp day is through credit of a day of service that they
5 do not actually work; right?

6 A. Correct. So they get paid -- they get -- they
7 get basically a future day for working a day.

8 Q. So are comp days paid as reflected in the days
9 of service calculation? And I'll refer you here to
10 Exhibit JJN-02, which is a schedule that you provided
11 with your testimony, and specifically, Pages 24 to 27.

12 COMMISSIONER RENDAHL: Could you repeat
13 the exhibit number, please?

14 MS. DeLAPPE: Yes. JJN-2, and there at
15 Page 24, there's a schedule of days of service and
16 distribution of pilotage revenue and expense.

17 THE WITNESS: Okay. I'm there.

18 Q. (By Ms. DeLappe) Thank you.

19 Are comp days paid as reflected in the days of
20 service calculation in this schedule?

21 A. The days of service is the days a pilot is on
22 the distribution. So if they're burning comp days,
23 they're on the distribution.

24 Q. From this schedule, is it possible to tell
25 which pilots are getting credited for days of service as

1 an active pilot who is piloting versus which pilots are
2 getting days of service credit for burning callbacks
3 while not actively piloting?

4 A. No.

5 Q. If you could now turn to Exhibit JJN-13X, and
6 you'll see this shows a summary of the details of
7 individual distributions to pilots with anonymized pilot
8 numbers and actual check amounts for each month, so
9 starting at Page 2.

10 A. Okay.

11 Q. And you recognize this document; right?

12 A. Yes.

13 Q. Let's turn to Pages 14 and 15, please.

14 So, there, we see the information for
15 July 2021, and the stated earnings per pilot that month
16 was \$33,656.87; right?

17 A. Yes.

18 Q. But the actual check amounts vary, don't they?

19 A. Yes.

20 Q. So if -- I won't ask you to -- I won't spend
21 time looking at this in detail, but if -- if only four
22 of the pilots that month received a check equal to the
23 stated earnings, is it possible that some or all of
24 those pilots were burning callback days?

25 A. I'm unable to comment without looking at

1 specific details.

2 Q. Can you explain, in general, why some cash
3 disbursements do not equal stated earnings?

4 A. There's expenses or adjustments that come out
5 after the earnings, for example, buy-ins would reduce
6 the actual check paid --

7 Q. And --

8 A. -- or possible insurance payments. Sorry.

9 Q. Mm-hmm. And so what are the situations in
10 which a pilot would receive a check that equals stated
11 earnings?

12 A. If they had no adjustments for expenses
13 reducing their check.

14 Q. And when you say insurance, what type of
15 insurance are you talking about as one of the
16 adjustments?

17 A. I don't know specifically without looking at
18 the details of it. I just know there's expenses that
19 reduce the actual amount of the check that they get;
20 there could be.

21 Q. Would a pilot that no longer is actively
22 piloting and no longer has a license to pilot, would
23 they have expenses that would require adjustments from
24 their stated earnings?

25 A. I'm not sure. That's beyond the scope of kind

1 of what I look at.

2 Q. Let's look -- one last area of questions I
3 have for you. If you could look at Exhibit WTB-18X,
4 I -- this is the order -- the final order from the last
5 rate case. I presume you're familiar with this?

6 A. Yes.

7 Q. If you could look -- turn to Page 76 of the
8 exhibit, which is Page 71 of the order, Paragraph 236.

9 And I'll just read to you the part I'd like to
10 focus on. It says: "PSP must defer the revenue from a
11 callback assignment in order to properly attribute the
12 costs" -- excuse me -- "attribute the costs to the
13 vessel that caused PSP to incur the expense at the time
14 the expense was incurred."

15 So going back to your Exhibit JJN-5, if we
16 look at Page 2, you list callback days as a line item
17 under "Seattle Office Operating Expense and
18 Administrative Overhead"; right?

19 A. Yes.

20 Q. So that's Number 2 on that list?

21 A. Yes.

22 Q. Would you agree with me that this is not
23 deferring the revenue to attribute the costs to the
24 vessel that caused the expense at the time the expense
25 was occurred -- incurred?

1 A. No, I would disagree. This -- this is putting
2 the expense in the period when the vessel moved.

3 Q. How does it attribute the costs to the vessel
4 that caused the expense?

5 A. It doesn't attribute it to the specific
6 vessel, but it does attribute it to the period in which
7 the vessel movement occurred.

8 Q. You will agree with me that it is attributed
9 to Seattle office operating expense and administrative
10 overhead; right?

11 A. Yes.

12 Q. And that's not a vessel; right?

13 A. That's just a categorization, but, no, it
14 doesn't attribute it to a specific vessel. In the
15 accounting records, it puts it -- puts the expense in
16 the period in which it happens so that the pilot
17 distributions are reduced as a result of those
18 additional days.

19 Q. I see I have no further time. Thank you.

20 JUDGE HOWARD: Any redirect?

21 MR. HAGLUND: Yes, your Honor.

22

23 REDIRECT EXAMINATION

24 BY MR. HAGLUND

25 Q. So going back to that topic, Ms. Norris, if we

1 could just pull up MM-80X? This is in the record. It's
2 a full copy of the 2022 audit that you prepared.

3 Do you recognize this document?

4 A. Yes.

5 Q. If we could turn to Page 15 and blow up --
6 call out Note 4. And is this -- what's the purpose of
7 this footnote, Ms. Norris?

8 A. This footnote is to explain how the callback
9 days are accounted for and to describe the callback day
10 liability on the financial statements.

11 Q. And is this the footnote where you are
12 reporting publicly how PSP implemented the direction to
13 use the full accrual method accounting to record
14 callback day liabilities?

15 A. Yes. We went back to May 1, 2021, to describe
16 how that accounting policy was changed.

17 Q. And as a practical matter, you were -- if you
18 go to the page that was in draft form, from what was
19 displayed earlier, that's Page 30 of this final audit in
20 MM-80X.

21 If we could go to Page 30, and if we look at
22 the Number 2 item there, that's the \$638,334. So that's
23 accrued, and could you explain what happens on a monthly
24 basis for the -- in terms of how is this -- how is the
25 money generated? Or how is -- how is the accrual made

1 and the money set aside for callback days as they occur
2 in a given month? Would you explain that?

3 A. Yes. So in a given month, there's a report
4 that lists the total number of callback days worked. So
5 that -- that report increase -- so if a callback day is
6 worked, there's an additional expense that is shown here
7 to reduce the pilot distributions by the amount of
8 callback days worked. When a callback day is used by a
9 pilot, that liability and, respectively, that expense is
10 reduced as that callback day is used. So the liability
11 is a moving number based on the amount of days earned
12 or -- or worked by pilots and the amount of days used or
13 redeemed by pilots.

14 Q. So -- and you explain in that Footnote 4, how
15 this approach complies with Order 09?

16 A. Yes.

17 Q. Okay. Now, you were asked some questions
18 about the difference in the amount earned by each pilot,
19 which, under the bylaws, is equal per pilot, and the
20 actual cash distribution check received.

21 And you mentioned buy-ins. Could you explain
22 what that buy-ins are and how long that time frame
23 occurs?

24 A. Yes. So when a pilot becomes a new pilot,
25 there's a calculated buy-in amount, and that amount is

1 divided -- off the top of my head, I think it's over 84
2 months. And, evenly, every month, for the number of
3 months, it -- 84 might not be the right amount. I'm
4 just going off the top of my head, but it's divided by a
5 number of months, and that is -- that amount or that
6 payment amount is -- reduces their distribution every
7 month. So they don't get that money, it goes into
8 their -- to reduce their buy-in liability.

9 Q. And do you happen to recall the approximate
10 amount of the buy-in for a new pilot in 2022?

11 A. I could look that up, but I believe it was
12 approximately 400,000.

13 Q. Okay. So it's -- it's a substantial sum of
14 money that every new licensee must pay in on a monthly
15 basis over a period of years?

16 A. Right.

17 Q. Okay. Now, if we could put up an exhibit that
18 Ms. DeLappe showed you, IC-14, and this is a workload
19 table for a particular year. This is for the 2022 year
20 that --

21 MS. DeLAPPE: Objection to counsel
22 continuing to testify.

23 MR. HAGLUND: Your Honor, I was only
24 introducing the exhibit to the witness and making sure
25 that the right reference to the tabs, this is an Excel

1 spreadsheet. For the record to be clear, one needs to
2 note the year of the tab.

3 JUDGE HOWARD: I -- in that particular
4 instance, I was not as concerned with Mr. Haglund
5 describing the exhibit.

6 Q. (By Mr. Haglund) So my question for you,
7 Ms. Norris, is do you know whether not-fit-for-duty
8 pilots were excluded from the tabulation here?

9 A. I am unaware if they are or not.

10 Q. So you don't know how Captain Carlson
11 tabulated this, the Puget Sound number of pilots entry
12 for 2022 on this workload table?

13 A. No.

14 Q. Okay. Thank you. No further questions.

15 JUDGE HOWARD: Do we have any questions
16 from the bench?

17 COMMISSIONER DOUMIT: None from me,
18 your Honor.

19 CHAIR DANNER: No, your Honor.

20 COMMISSIONER RENDAHL: Your Honor, I just
21 have a procedural issue that I think we could defer to
22 later, but I note that MM-80X is the same as JJN-07,
23 which I believe you had rejected earlier, so I don't
24 know how you want to handle that in the record.

25 JUDGE HOWARD: Yes, that's correct,

1 Commissioner Rendahl. I had -- in my mind, I had deemed
2 that PSP submitted it as cross-exhibit for
3 Captain Moore, and that was -- that was appropriate.

4 What I struck was -- what I rejected was
5 the submission of that as supplemental testimony on, I
6 believe it was, March 24th outside of the procedural
7 schedule.

8 COMMISSIONER RENDAHL: Okay. I just
9 wanted to raise that. I have no further questions.

10 JUDGE HOWARD: All right. Hearing no
11 further bench questions, Ms. Morris -- Ms. Norris --
12 excuse me -- thank you for your testimony. You are
13 excused from the remainder of the hearing.

14 THE WITNESS: Thank you.

15 JUDGE HOWARD: And I believe that
16 concludes the planned cross of PSP witnesses. Is that
17 correct, Ms. DeLappe?

18 MS. DeLAPPE: Yes, your Honor. Thank
19 you.

20 JUDGE HOWARD: All right. And I will
21 note that no party requested to cross the remaining PSP
22 witnesses, which include: Captain Dempsey, Diamond,
23 Johnson, Jordan, Captain Julien, Captain McIntyre,
24 Nielsen, Semler, Tabler, Titone -- I may be saying that
25 wrong -- Captain Wodehouse.

1 Were there any questions from the bench
2 for any of these witnesses?

3 COMMISSIONER RENDAHL: No, your Honor.

4 CHAIR DANNER: No, your Honor.

5 COMMISSIONER DOUMIT: No, your Honor.

6 Thank you.

7 JUDGE HOWARD: All right. Thank you.

8 And we have already -- due to scheduling
9 issues and requirements, we have already handled the
10 cross of 3 out of 5 of PMSA's witnesses. I believe that
11 means, next, we are turning to Christopher Noble, and
12 then we will turn to the two staff witnesses. And we
13 will also touch on Jordan Royer to make sure there are
14 no bench questions for Jordan Royer.

15 So Christopher Noble, is Mr. Noble
16 online?

17 THE WITNESS: I am.

18 JUDGE HOWARD: All right. Great.

19 Can you see and hear me all right?

20 THE WITNESS: I can see and hear you. Am
21 I heard by you as well?

22 JUDGE HOWARD: Yes.

23 If you'd please raise your right hand,
24 I'll swear you in.

25 Do you swear or affirm that the testimony

1 you give today is the truth, the whole truth, and
2 nothing but the truth?

3 THE WITNESS: I do.

4 JUDGE HOWARD: All right. Ms. DeLappe,
5 would you please introduce the witness?

6 MS. DeLAPPE: Thank you.

7 Mr. Noble, could you please state your
8 full name?

9 THE WITNESS: Christopher F. Noble.

10 MS. DeLAPPE: As you know, your prefiled
11 testimony and exhibits have already been accepted into
12 evidence. Are you now adopting those under oath?

13 THE WITNESS: Yes, I am.

14 MS. DeLAPPE: I tender the witness.

15 JUDGE HOWARD: All right. And PSP
16 indicated cross for this witness and you may proceed.

17 MR. HAGLUND: Thank you, your Honor.

18

19 CROSS-EXAMINATION

20 BY MR. HAGLUND

21 Q. Mr. Noble, it's true, is it not, that you're
22 not a pension attorney?

23 A. That's accurate, yes.

24 Q. Okay. And you're not qualified to offer
25 opinions on pension law issues?

1 A. Opinions not in the legal sense. As an
2 involved actuary, I was tested on the requirements for
3 qualified pension plans by the Joint Board for the
4 Enrollment of Actuaries, which is operated under the
5 Department of the Treasury and the Department of Labor.
6 And as an enrolled actuary, I was expected to be able to
7 understand and apply the sections of the code that are
8 applicable to defined benefit pension plans.

9 Q. Okay. Is it fair to say that you concluded,
10 in your testimony, in a couple of places, that
11 Christopher Wood's projections of the 50-year cost
12 projections under a number of scenarios for the
13 transitioning the PSP pension plan to -- well, let me
14 start over.

15 You're familiar with the projections that
16 Christopher Wood made over 50-year timeframes for two
17 different alternative transitions of the pay-as-you-go
18 pension plan to a fully defined -- a fully funded
19 defined benefit plan; is that right?

20 A. I'm familiar with those projections, yes.

21 Q. And is it fair to say that in your testimony
22 you concluded that Mr. Wood's projections were
23 reasonable in terms of the assumptions utilized? In
24 other words, based on the assumptions he utilized, the
25 projections were accurate?

1 A. Yes. Based on the assumptions he utilized, it
2 appear to me that the projections were consistent with
3 those assumptions.

4 Q. Okay. And then you did some of your own
5 projections where you reduced the rate of return; is
6 that right?

7 A. I did. And in my report to PMSA, I included a
8 projection that reflected a reduction in the discount
9 rates and the expected rate of return of 100 basis
10 points for comparison purposes.

11 Q. Okay. And Mr. Wood testified earlier today,
12 and there were some questions about the 5 percent rate
13 of investment return, net of investment costs, that he
14 incorporated into his projections. Did you hear that
15 testimony earlier?

16 A. I did hear that testimony earlier, yes.

17 Q. And so my question is: Did you, in your
18 alternative, reduce that rate of return by 100 basis
19 points, in other words, from 5 percent to 4 percent?

20 A. First of all, the projections I provided were
21 based off of an earlier set of projections from
22 Mr. Wood, the ones in his original testimony, not the
23 ones in his rebuttal. And his expected rate of return
24 was significantly higher in those -- in those original
25 projections because he had higher discount rates.

1 And, furthermore, I don't believe that
2 Mr. Wood even agreed that his investment rate of return
3 was 5 percent. I think he, in his cross this morning,
4 agreed that it was higher and, in fact, I would argue
5 that it's higher than he said it was.

6 Q. So as you heard Mr. Wood this morning, you
7 thought he said that the assumption he made was
8 different than 5 percent?

9 A. Yes.

10 Q. He discussed --

11 A. He assumed that the investment rate of return
12 would match the discount rates, and there are three
13 discount rates, 4.75 percent, 5.0 percent, and
14 5.74 percent, that apply to different periods in the
15 projection. And calculating an investment rate of
16 return in that scenario is a little bit complicated, but
17 it certainly would be higher than 5 percent, and I
18 believe that Mr. Wood agreed to that.

19 Q. Well, the -- we got a record of what he said
20 this morning, and it will speak for itself.

21 I have another question for you. In your
22 projection -- if we could go to your -- I want to pull a
23 portion of your testimony that relates to my next
24 question at CNIT -- 1T, Page 13.

25 A. This is my testimony?

1 Q. Yes, this -- and it'll be on the screen in a
2 moment if you have a screen there, but...

3 A. I have a screen. I have it here in front of
4 me on paper as well.

5 Q. Okay. However, you wish to look at it, but if
6 you could call out the first paragraph. That's Number 2
7 there.

8 So the -- the -- is it true, Mr. Noble, that
9 your projections reduced the active pilot count to 44
10 pilots?

11 A. One of the projections that I provided did. I
12 provided two sets of projections in my report. One of
13 them retained the 52 active pilots that had been used in
14 Mr. Wood's original testimony, in his original exhibits,
15 and the other one reduced the active participant count
16 to 44 pilots, again, for comparison purposes.

17 Q. What was your -- did you receive some
18 instructions from PMSA regarding reducing the pilot
19 count to 44 for purposes of a pension cost illustration?

20 A. Yeah. PMSA asked me to display sensitivity of
21 the projections to both the discount rate and the active
22 pilot count.

23 Q. Did you learn from PMSA that they have an
24 intent to see pilot numbers drop to that level through
25 attrition?

1 A. I don't believe that they -- I heard any such
2 intent. I was requested to show what the projections
3 would look like if the active participant count did
4 drop, not -- not with an understanding that that was
5 what was going to happen, but for comparison purposes
6 and to understand the sensitivity of those projections
7 through the active participant count.

8 Q. Okay. Thank you for clarifying that. That's
9 all the questions I have.

10 JUDGE HOWARD: Any redirect?

11 MS. DeLAPPE: Yes, thank you.

12

13

REDIRECT EXAMINATION

14 BY MS. DeLAPPE

15 Q. Mr. Noble, counsel asked you just now about
16 your opinions about the reasonableness of Mr. Wood's
17 assumptions and about the rate of return. Would you
18 please explain your view of the investment return
19 assumption used by Mr. Wood?

20 A. Mr. Wood, as he said very clearly in his
21 testimony, based his investment return as equal to the
22 discount rate. And that's a complicated assertion or
23 statement because there were actually three discount
24 rates. And so what that means is that you have to take
25 the assets that are in the trust, the benefits, and a

1 certain portion of them are assigned -- assigned in at
2 least a book sense, not necessarily in any legal sense,
3 to pay the benefits in the first five years. Another
4 portion to pay benefits in the subsequent 15 years, so
5 there's 16 through 20, and the remainder to pay benefits
6 after 20 years.

7 And the first portion needs to earn a rate of
8 interest equal to the discount rate for those first
9 five years, which was 4.75 percent. The next portion
10 would be to -- would need to earn a rate of interest of
11 5 percent to pay benefits in the next 15 years. And the
12 last remaining portion would need to earn an investment
13 return of 5.74 percent.

14 Now, in the projected plan, which starts with
15 no retirees, there would be very few benefit payments in
16 the first five years, so very little of the assets would
17 be allocated to payment of benefits in the first
18 five years. Nearly all of them would be for the
19 subsequent periods and would need to earn rates of
20 return for 5 percent or 5.74 percent.

21 Furthermore, Mr. Wood assumed the same set of
22 discount rates in each subsequent year, and what that
23 means is that originally the -- the payments that were
24 assigned to year 21, which would've needed to earn
25 5.74 percent, the next year those payments were only in

1 year 20, and so they only need to earn 5 percent. And
2 that means that the assets that were set aside are no
3 longer sufficient and there would be an increase in the
4 assets to make that up.

5 So his claim -- his projections that are based
6 on no gain or loss really comes down to a projection
7 that there will be losses on the liability that need to
8 be made up by gains on the assets in order to have no
9 net gains or losses. So even looking at those three
10 discount rates that he used, which would point to an
11 investment rate of return in excess of 5 percent, the
12 actual rate of return that would be required is higher
13 than that.

14 Furthermore, Mr. Wood asserted that the
15 discount rates were based on current rates of return on
16 high grade corporate bonds. They are not. They are
17 based on long-term average rates of return of high-grade
18 corporate bonds, and that difference means that you
19 can't make that discount rate on an investment of
20 high-quality fixed-income investments. It would need to
21 be an allocation to riskier asset classes, such as
22 equities, which Mr. Wood, in his testimony this morning,
23 acknowledged would be likely, but that additional risk
24 is part of the investment return that he has assumed.

25 Q. You were also asked a little bit about your --

1 generally, your knowledge as an actuary, the type of
2 actuarial work that -- and experience that you have.

3 Can you tell us your view of the complexity of
4 the actuarial work that would be needed for the -- PSP's
5 proposed plan?

6 A. The multiple-employer defined benefit plan
7 that is proposed is -- it certainly is allowed. There's
8 a section of the Internal Revenue Code for such plans,
9 but they're not common. And part of the reason they're
10 not common is because they're complicated, and the
11 Internal Revenue Code specifies that the contribution
12 from each employer -- that would be each pilot in this
13 plan -- needs to be at least the minimum that would be
14 required if that pilot maintained their own plan, which
15 means that in order to do the actuarial work, the
16 actuary would need to first divide the assets in the
17 trust and allocate those between the various pilots and
18 then do a minimum required calculation for each pilot in
19 order to determine what each pilot's contribution would
20 need to be.

21 That's quite an extensive set of calculations,
22 and those calculations need to be documented in an
23 attachment to the Schedule SB filed that's part of the
24 5500 filing that needs to be made every year. So I
25 believe that that's pretty onerous for a plan of this

1 size. Multiple employer plans that I have some
2 awareness of are not a group of self-employed
3 individuals. They are much bigger companies that are
4 working together in a single pension plan.

5 Q. One last question for you, Mr. Noble, in your
6 view, would the proposed plan have any disadvantages for
7 pilots compared to the current farebox plan?

8 A. There are some disadvantages. I think the
9 original testimony of Mr. McNeil and Mr. Wood pointed
10 out some of the advantages to participants. But because
11 participants in the plan need to make contributions
12 based on minimum -- at least the minimum required
13 contribution calculation, pilots would see a gradually
14 increasing rate, a percentage of their pay go to
15 contributing to this pension plan during the course of
16 their career if they were making minimum required
17 contributions.

18 So pilots starting out, their contribution
19 might be, for example, roughly 4 percent of their pay.
20 But by the time they are ready to retire, their
21 contributions would need to be at least 30 percent of
22 their pay, and that's assuming that the plan doesn't
23 have gains or losses, that is, that the assumptions are
24 met.

25 In the event that there are losses, which, in

1 the course of a pilot's career, there almost certainly
2 will be at some point, those required contributions
3 could be very volatile, and pilots could see a dramatic
4 increase suddenly and, potentially unexpectedly, in the
5 contribution that they need to make to the plan from one
6 year to the next.

7 Finally, I think that, as I pointed out in my
8 testimony, the pilots, once they've retired, would
9 continue to be participants in the plan. They're not
10 employees of any of the other participants, and so
11 contributions would need to be calculated for those
12 retirees as well. And some retirees may find that they
13 need to contribute to the plan after they've retired,
14 probably not what any pilot expects.

15 Q. Thank you. I have no further questions.

16 JUDGE HOWARD: Okay. Do we have any
17 questions from the bench?

18 CHAIR DANNER: No, your Honor.

19 COMMISSIONER RENDAHL: No, your Honor.

20 COMMISSIONER DOUMIT: No questions.

21 Thank you.

22 JUDGE HOWARD: All right. Mr. Noble,
23 thank you for your testimony. You are excused.

24 THE WITNESS: Thank you.

25 JUDGE HOWARD: No party requested to

1 cross PMSA witness Jordan Royer. Are there any
2 questions from the bench for this witness?

3 CHAIR DANNER: No, your Honor.

4 COMMISSIONER RENDAHL: No, your Honor.

5 COMMISSIONER DOUMIT: No, thank you.

6 JUDGE HOWARD: All right. Hearing none,
7 we are turning to the two staff witnesses. The first
8 one is Jaclynn Simmons.

9 MR. HAGLUND: Your Honor, PSP has decided
10 to waive cross-examination of Ms. Simmons.

11 JUDGE HOWARD: All right. Thank you.

12 Are there any questions from the bench
13 for Ms. Simmons?

14 COMMISSIONER RENDAHL: Your Honor, I do
15 have one.

16 JUDGE HOWARD: All right. Ms. Simmons,
17 are you online?

18 THE WITNESS: Yes, your Honor.

19 JUDGE HOWARD: All right. If you'd
20 please raise your right, I'll swear you in.

21 Do you swear or affirm that the testimony
22 you give today is the truth, the whole truth, and
23 nothing but the truth?

24 THE WITNESS: I do.

25 JUDGE HOWARD: Thank you.

1 Mr. Callaghan, would you please introduce
2 the witness?

3 MR. CALLAGHAN: Yes, your Honor. Thank
4 you.

5 Good afternoon, Ms. Simmons.

6 THE WITNESS: Good afternoon.

7 MR. CALLAGHAN: Could you please state
8 your name and spell your last name for the record?

9 THE WITNESS: Jaclynn Simmons,
10 S-i-m-m-o-n-s.

11 MR. CALLAGHAN: Ms. Simmons, did you file
12 response testimony and cross-answering testimony in this
13 case?

14 THE WITNESS: Yes, I did.

15 MR. CALLAGHAN: And do you have any
16 corrections or amendments to your testimony or exhibits
17 today?

18 THE WITNESS: Yes, I do. There is a
19 correction to JNS-1T, JNS-7, and JNS-02r for the
20 restating adjustment, R11. It should be reduced from
21 \$131,331 to \$126,674 to account for a double calculation
22 of the double payment removal. And in JNS-02r, there is
23 an amount of \$10,427 in finance charges. Staff did not
24 intend to make this adjustment and, therefore, it should
25 be removed.

1 MR. CALLAGHAN: Thank you. And,
2 Ms. Simmons, you became aware of these errors after the
3 evidentiary hearing started in the case; correct?

4 THE WITNESS: Yes, sir.

5 MR. CALLAGHAN: Thank you.

6 Staff tenders the witness for bench
7 questions. Thank you.

8 COMMISSIONER RENDAHL: Thank you.

9 Good afternoon, Ms. Simmons.

10 THE WITNESS: Good afternoon.

11 COMMISSIONER RENDAHL: So I have just one
12 question for you and that is about the treatment of the
13 paycheck protection plan loan. Do you recall your
14 testimony on that? I have Page 11 of JNS-1T.

15 THE WITNESS: Yes, ma'am.

16 COMMISSIONER RENDAHL: Okay. And, also,
17 I can't pull up your whole spreadsheet, but there is a
18 reference in your exhibit JNS-2r, and I'm simply wanting
19 clarification on staff's position on the treatment of
20 the loan.

21 Is staff accepting the adjustment R08 as
22 it is indicated in your revenue report model, or are you
23 recommending removing R08 as it's stated in your
24 testimony? There's a little bit of inconsistency
25 between those two, between JNS-2r and JNS-1T, at

1 Page 11. And I may be misunderstanding it, but if you
2 could please clarify, that would be helpful.

3 THE WITNESS: I do not see there's an R08
4 for the paycheck protection loan. There's an R12.

5 COMMISSIONER RENDAHL: Okay. In your
6 JNS-2r?

7 THE WITNESS: Put that up on the screen,
8 please?

9 So in the JNS-2r, the restating
10 adjustment for R8 is a removal of a \$3,227 for the
11 travel account. Is that what you're referring to?

12 COMMISSIONER RENDAHL: I'm referring to
13 the paycheck protection plan, so maybe it's not R08,
14 but -- so you had said it was R12, I think?

15 THE WITNESS: Yes, ma'am.

16 COMMISSIONER RENDAHL: Okay. So if we're
17 talking about R12 then, just a clarification between
18 your testimony and what's in the JNS-2r and clarifying
19 what staff's position is on that adjustment.

20 THE WITNESS: Yes. So let me pull up the
21 results of operations real quick.

22 Staff -- staff's intent was to remove the
23 paycheck protection plan completely from the account.
24 It was submitted as a negative amount in the 2021
25 calculations, so staff added it in as a positive to

1 remove it to make it a net effect of zero.

2 COMMISSIONER RENDAHL: Okay. Thank you
3 very much. That's all I have. Appreciate it.

4 JUDGE HOWARD: All right. Were there any
5 further questions from the bench?

6 COMMISSIONER DOUMIT: No, your Honor.
7 Thank you.

8 JUDGE HOWARD: All right. Thank you.

9 CHAIR DANNER: No, your Honor.

10 JUDGE HOWARD: Hearing none, thank you,
11 Ms. Simmons. You are excused.

12 THE WITNESS: Thank you.

13 JUDGE HOWARD: Our next and last witness
14 on our order of presentation is staff witness
15 Mike Young.

16 Mr. Young, are you online?

17 THE WITNESS: Yes, I am. Can you hear
18 me?

19 JUDGE HOWARD: Yes.

20 If you'd please raise your right hand,
21 I'll swear you in.

22 Do you swear or affirm that the testimony
23 you give today is the truth, the whole truth, and
24 nothing but the truth?

25 THE WITNESS: I do.

1 JUDGE HOWARD: All right. Mr. Callaghan,
2 could you please introduce the witness?

3 MR. CALLAGHAN: Yes, your Honor. Thank
4 you.

5 Good afternoon, Mr. Young.

6 THE WITNESS: Good afternoon.

7 MR. CALLAGHAN: Could you please state
8 your name and spell your last name for the record?

9 THE WITNESS: Yes, it's Michael Young,
10 Y-o-u-n-g.

11 MR. CALLAGHAN: Mr. Young, did you file
12 response and cross-answering testimony in this case?

13 THE WITNESS: Yes, I did.

14 MR. CALLAGHAN: Is it true and correct to
15 the best of your knowledge?

16 THE WITNESS: Yes, it is.

17 MR. CALLAGHAN: All right. Thank you.

18 Your Honor, last but certainly not least,
19 Mr. Young is tendered for cross-examination.

20 JUDGE HOWARD: All right. And PSP
21 indicated cross for this witness. You may proceed.

22 MR. HAGLUND: Thank you, your Honor.

23

24

25

1 CROSS-EXAMINATION

2 BY MR. HAGLUND

3 Q. Mr. Young, I'd first like to make sure that we
4 understand the staff's position on the PSP pro forma
5 adjustment -- or pro forma amount of \$902,000,
6 approximately, related to pension costs.

7 And in your testimony you -- if we go to
8 MY-1T, Page 22, this is the pension cost section of your
9 original testimony. And you say, at Line 15 there, in
10 answer to the question whether staff recommends
11 including pension costs through that adjustment, and you
12 say no.

13 Then, you go on -- let's go to the bottom of
14 the page and there, you say, how does staff recommend
15 that the commission addresses pension costs? And you
16 state there: "Staff proposes leaving pension plan costs
17 at the level of the previous rate case. Staff believes
18 those are the best currently available known and
19 measurable proxy for pension costs going forward."

20 Do you see that testimony?

21 A. Yes.

22 Q. And does -- do you stand by that position, or
23 has staff had to back the \$902,000 pro forma adjustment
24 into the revenue requirement?

25 A. I stand by the adjustment. Removing that

1 adjustment, we did not add it back in. However, I think
2 what you're probably referring to is the per books
3 amount as initially filed for 2021 is perhaps not the
4 same as the amount that was included in the rate
5 calculation in the previous case.

6 Q. Well, let me -- let me come back to that
7 issue, but let me -- let's go to Ms. Simmons' testimony,
8 JNS-10T. This is her rebuttal testimony at Page 3.

9 And if you look at the -- to call out the
10 first question and answer, she's asked what specifically
11 does staff wish to revise, and Number 3 is pilot pension
12 staff missed adding in PSP's pro forma amount of
13 \$902,000.

14 Doesn't that indicate you were recognizing
15 that as a cost to be recovered in terms of what staff
16 was recommending?

17 A. No. I think what Ms. Simmons is referring to
18 here is the corrections that were made to the exhibit,
19 JNS-2, and corrected in JNS-2r, in which the removal of
20 the 902,000 has been initially left off and was included
21 in the correction.

22 Q. Okay. So you -- staff stands by your
23 testimony that this \$902,000 pro forma adjustment should
24 be disallowed?

25 A. That's correct. I do not believe it was

1 supported.

2 Q. Okay. So if you could -- if we could pull up
3 Exhibit MM-74X, and is this -- before I ask a question
4 related to Page 1 of this document, is it fair to say
5 that you're -- that staff's position is that the
6 pension -- PSP pension should be funded at the same
7 level that was approved in the -- in Order 09 in the
8 prior rate case? And we've got a page here that shows
9 what that amount is. If we could call out the
10 highlighted line, which was \$5,275,000 and change.

11 Do you recognize this page as the document
12 from the schedule from the prior rate case that shows
13 the amount being approved for PSP pension costs in Rate
14 Order 09?

15 A. Yes.

16 Q. And if we go to Page 2 of this document, this
17 is a -- of this exhibit, this is a page from the 2021
18 test year audit. And it shows, at Line 24, if we could
19 call that out, an actual pension cost incurred by the
20 Puget Sound Pilots in 2021 of 5,517,000, over 275 -- or,
21 over \$225,000 more than the amount approved in Order 09.
22 Do you see that?

23 A. Yes.

24 Q. And if we look at the -- and do you -- in
25 preparing for today, do you recognize that the \$902,000

1 pro forma adjustment that you are proposing to disallow
2 is the difference between this test year amount of
3 5.5 million and this roughly 6.4 million in projected
4 pension costs for 2023?

5 A. I believe that's correct.

6 Q. So, in effect, your position will result in
7 the disallowance of approximately 1.2 million dollars as
8 opposed to 900,000?

9 A. Well, actually --

10 Q. Is that correct?

11 A. I'm sorry?

12 Q. Is that correct?

13 A. I would have to say no because the amount that
14 we used in our calculation for the revenue requirement
15 was the 5,570,478. So the only amount excluded is
16 the 902,438 adjustment.

17 Q. Okay. So when you say in your testimony -- if
18 we could call that back up, MY-1T, at the bottom of
19 Page 22, and we'll go on to the top of Page 23, you're
20 saying there, at the bottom of 22: "Staff proposes
21 leaving pension costs at the level of the previous rate
22 case."

23 You're changing that position to proposing
24 leaving them at the level incurred in the test year?

25 A. Well, again, you know, the number used in the

1 calculation is the amount from the -- from 2021, so I
2 would say there's an oversight in the favor of the
3 pilots.

4 Q. So -- well, let me -- then I -- I'm not sure I
5 understand your position. Is your position -- is your
6 recommendation to the commission that the amount that
7 the Puget Sound Pilots seek in the way of pension costs
8 for 2023, which is the estimated actual costs of
9 \$6.4 million, should be disallowed all the way down to
10 the 5.25 million from the prior rate case as you state
11 in this first sentence?

12 A. Yes. That was the original intent of my
13 testimony was to remove any adjustments or changes to
14 the pension costs until the revised or updated or the
15 new pension plan had been implemented.

16 Q. So if we go back to Page 2 of Exhibit MM-74X,
17 this means that there's -- that the current state of
18 your adjustments is not accurate -- correct? -- in terms
19 of what -- the current record does not reflect this
20 extra \$275,000 reduction in the pension amount that
21 would be recovered in the tariff you would propose;
22 correct?

23 A. Per my testimony, that is correct. But,
24 again, the actual number -- this is the actual number
25 that was used in the calculation for staff-proposed

1 rates.

2 Q. Well, I guess you're confusing me here,
3 Mr. Young. What should the commission do, in your
4 opinion, disallow 902,000 or 1.2 million?

5 A. If I had to do this over again, I would
6 probably go with the 1.2 million.

7 Q. Probably?

8 A. I don't -- there was --

9 Q. Okay. So looking at the page that's on the
10 screen now, which the 2021 audit, how is the 5.5 -- the
11 \$5,517,000 actual pension costs in the test year of 2021
12 not a known and measurable expense?

13 A. Well, I'm not saying that it was not known and
14 measurable. I'm just saying that it hasn't been
15 supported.

16 Q. How has it not been supported? This is a
17 public -- this is an audit performed by a CPA.

18 A. We don't know exactly what formulation was
19 used to determine the amounts to contribute to the
20 pension plan, and I don't know if that was the existing
21 pay-as-you-go formulas, or if it was the formulas based
22 on the new proposed plan. That was not clear in the
23 filing that the pilots made.

24 Q. The 2021 audit is awfully clear in its
25 footnotes that the pay-as-you-go plan has continued;

1 isn't that the case?

2 A. I'm not certain.

3 Q. Did you not review that audit?

4 A. We've looked at the numbers. The numbers were
5 audited, and I'm not disputing that they were paid.

6 Q. So let's go to the next page, which is a page
7 from the 2022 audit which is in the record as part of
8 another exhibit. And, here, we see the actual Puget
9 Sound retirement pension costs of -- incurred or paid
10 in 2022. It's now up just under \$500,000 to \$6 million.
11 Is that not a known and measurable cost as reflected by
12 a publicly-available audit?

13 A. Well, again, it's known and measurable in the
14 sense that it -- it was audited, and that amount appears
15 to be paid out. But, again, I have no idea how this was
16 calculated or how the amounts were determined.

17 Q. Did staff issue any data requests inquiring
18 about this particular question before reaching the
19 conclusion that it would recommend disallowing what is
20 now 1.2 million dollars of known pension costs?

21 A. Staff requested the general ledgers for the
22 test year and the general ledgers for January through
23 June of 2021, which we did not receive.

24 Q. There were no questions specific to the
25 pension, were there? And you're not contesting these

1 payments weren't made, are you?

2 A. I'm not contesting that they were not made.

3 Q. Okay. Now, did you review the testimony of
4 Charles Costanzo and the discussion of the Washington
5 Supreme Court case involving the pension plan of Pacific
6 Telephone and Telegraph, the 1943 case? Did you review
7 his testimony on that topic?

8 A. I do not recall.

9 Q. So it's your position that the audited pension
10 costs of PSP in the test year are not a known and
11 measurable cost that the commission has required under
12 that Washington Supreme Court case to recognize and make
13 sure are covered in the tariff; is that your position?

14 MR. CALLAGHAN: Objection. Calls for a
15 legal opinion.

16 MR. HAGLUND: I'll withdraw the question.

17 Q. (By Mr. Haglund) And do you recognize,
18 Mr. Young, that if the -- if the 1.2 million dollars
19 that you propose be disallowed in projected pension
20 payments in 2023, that that will increase the expenses
21 that, in turn, increase -- decrease the net income of
22 each one of the Puget Sound Pilots?

23 A. Quite possibly.

24 Q. Well, it's not quite possibly, is it? It's
25 absolutely clear that it will, won't it?

1 A. Well, any -- yeah, any amount that you pay out
2 as an expense, yes, would probably reduce the amount
3 available for the pilots' distributions.

4 Q. And if I divide 56 -- or divide 1.2 million
5 dollars, rounding it by 56, that's \$21,428 that would
6 reduce the distributable net income of each Puget Sound
7 Pilot if there are 56; correct?

8 A. Yes. According to your math, yes.

9 Q. Okay. Now, let's turn to the DNI topic. Is
10 it -- it's correct, is it not, that you have no
11 discussion whatsoever of the distributable net income
12 topic in either your response testimony or your
13 cross-answering testimony?

14 A. That's correct.

15 Q. And the only place where one can find any
16 reference in your exhibits to DNI is if we could call up
17 MY-9, Page 1. The one behind -- the next page. That's
18 the cover page. If we could call out that table, and
19 would you agree that the line that says "target DNI of
20 56 pilots" on this exhibit of yours is the only place in
21 your testimony where you, on behalf of UTC staff,
22 address the topic of distributable net income for Puget
23 Sound Pilots in this rate case?

24 A. Directly, that's correct.

25 Q. And if one wishes to determine how -- if you

1 look at that line, it has a listing of the total amount
2 devoted to DNI per the current rates as you list them.
3 And then it has PSP's proposed rates, some -- the first
4 column's 21 million, PSP proposed rate column is
5 33.58 million, and then staff's proposed rates is
6 \$24.85 million. Do you see that?

7 A. Yes.

8 Q. And is it correct that you used 56 pilots as
9 the funded number of pilots recommended?

10 A. Yes, that's correct.

11 Q. And the DNI is -- one can reverse engineer
12 what you've done because there's a reference, I think,
13 in your testimony to adding the \$1.88 million in medical
14 insurance costs to DNI. And is it a fair statement that
15 this \$24.85 million is the combination of the same DNI
16 as was approved in Order 09 for the second tariff year,
17 \$410,075 times 56 pilots plus the \$1.88 million in
18 medical insurance costs; is that correct?

19 A. Yes, that's correct. And that is the
20 calculation that's shown at the bottom of the page
21 there.

22 Q. Okay. Did you -- did you review Mr. Lough's
23 testimony in evaluating the DNI recommendation to make
24 in this case?

25 A. No, I did not.

1 Q. You did not look at Mr. Lough's testimony that
2 assembled all of the comparable pilot income data that
3 is publicly available from around the country?

4 A. I scanned it when it was submitted, but I did
5 not use that in constructing my testimony here.

6 Q. Okay. So you did read it when submitted?

7 A. Yes.

8 Q. And did you review all of the exhibits?

9 A. I don't recall them. I probably looked -- I
10 probably looked at them.

11 Q. Okay. Now -- and they were referenced as --
12 did you -- if we could put on the screen -- did you
13 review the testimony of Mr. Moore?

14 A. Yes.

15 Q. Captain Moore on behalf of the PMSA?

16 A. Yes. Most of it, yes.

17 Q. If we could call up MM-1T, Page 190, and if we
18 could call out the five bullet points there? These are
19 five items that Mr. Moore -- Captain Moore claims are
20 necessary in order to conduct any sort of comparable
21 pilot group analysis.

22 Do you remember reading these bullet points?

23 A. I don't remember reading them. I may have.

24 Q. Do you -- is it your position that in order to
25 compare pilot groups from around the country, that the

1 commission must have detailed data regarding the
2 day-to-day work in each pilotage district under
3 consideration for comparison purposes?

4 MR. CALLAGHAN: Objection, your Honor.
5 This is outside the scope of Mr. Young's testimony.

6 MR. HAGLUND: Your Honor, he has a
7 reference in his testimony to DNI. It's the most -- one
8 of the most important issues in the case.

9 MR. CALLAGHAN: Your Honor --

10 MR. HAGLUND: I should be able to explore
11 what his understanding is of this particular key issue.

12 MR. CALLAGHAN: Your Honor, Mr. Young has
13 a reference to the DNI in the calculation in Exhibit 09.
14 He does not, anywhere in his testimony, talk about the
15 standards for comparability.

16 JUDGE HOWARD: I will allow Mr. Haglund
17 to explore this a little bit further because this is a
18 key element in the revenue requirement, and it is an
19 element of Mr. Young's testimony.

20 Q. (By Mr. Haglund) So, Mr. Young, my question for
21 you was, and I'll try to move through these very
22 quickly, is: Is it staff's position that detailed
23 day-to-day work data is necessary to compare pilot
24 groups?

25 A. Well, I don't know because I did not look at

1 comparability as an issue in this case.

2 Q. Okay. Then I won't go through the rest of the
3 bullets, but let me ask you these questions.

4 MR. HAGLUND: If we could call up -- this
5 is -- one of the exhibits in Mr. Lough's testimony was
6 an order from the Louisiana Pilotage Fee Commission.
7 This is DL-07. If we could look at Page 35 of that
8 exhibit?

9 And if we could -- actually, I was
10 mistaken, it should be page -- yeah, that's -- that was
11 37. 35 is what I was looking for. Now you're there.

12 If we could call -- if we could highlight
13 the first five lines of the second-to-last paragraph on
14 the page? The first five lines of the last paragraph.

15 Q. (By Mr. Haglund) Let me represent to you,
16 Mr. Young, that the Louisiana Pilotage Fee Commission,
17 like the UTC, will periodically engage experts to do
18 work. They engaged a consultant called -- UPC is the
19 acronym. They did analysis of the average compensation
20 for pilots in the United States ports other than the
21 state of Louisiana; found that in this December 1, 2020,
22 order -- '21 order, actually, to be \$478,000 per pilot
23 reflecting the range there.

24 Did you examine this order?

25 A. I did not.

1 Q. So if we go to the next page -- well, if you
2 didn't -- well, let me -- I -- I have a quick question
3 on the next page, and if you could call out the upper
4 part through the block quote.

5 Here, this is the next page in this rate
6 order, noting that the Louisiana Pilotage Fee
7 Commission's consultant recommended that the average
8 annual pilot compensations to be used for rate-making
9 purposes in this case be the \$586,019, which was the
10 target net approved in this rate order.

11 And then the rationale supporting that, which
12 is in the block quote, referenced the fact that they
13 took the actual income for one pilot group in Louisiana,
14 the New Orleans-Baton Rouge Pilots, acronym NOBRA, and
15 increased that by 100 -- or by 22.67 percent because
16 they had more movements -- or handles is the term
17 there -- and that's how they derived the \$586,019 target
18 net compensation that was approved in that case.

19 My question for you, Mr. Young, is in
20 evaluating your staff recommendation to the commission
21 on proposed DNI in this case, did you evaluate the level
22 of compensation being paid to pilots in the state of --
23 another pilot group in the State of Washington,
24 specifically the Grays Harbor pilots?

25 MR. CALLAGHAN: Objection, your Honor.

1 Asked and answered. Mr. Young has already stated that
2 he didn't evaluate comparability as an issue in this
3 case.

4 JUDGE HOWARD: I will allow the question.

5 THE WITNESS: No, I did not. As has been
6 stated, I did not look at comparability. The commission
7 is not required to do that. The commission established
8 a DNI in the previous case so I did not go any further
9 into it than that.

10 Q. (By Mr. Haglund) Isn't it true, Mr. Young, that
11 the -- that the commission decided on the basis of weak
12 evidence to reject PSP's comparable income information
13 as insufficient? They did not decide that it was
14 irrelevant to future cases, did they?

15 A. Are you referring to the Order 9 from the last
16 case?

17 Q. Yes, yes.

18 A. I'm aware that the commission did not choose
19 to use the comparability in that instance, but, again,
20 they're not -- they're not required to. They may choose
21 to.

22 MR. HAGLUND: Okay. And let me ask that
23 the Exhibit DL-22 be placed on the screen.

24 Q. (By Mr. Haglund) Do you recall looking at this
25 exhibit to Mr. Lough's testimony, which is the -- a copy

1 of the 2022 new contract substantially increasing
2 compensation to the Grays Harbor pilots that was --

3 A. No, I don't recall this.

4 Q. So if we could go to Page 2, you don't recall
5 the base salary at the Number 1 there in the middle
6 being increased to \$350,000?

7 A. No. The Grays Harbor pilots are in a
8 different rate-setting situation so I did not consider
9 any of their -- their information in this case.

10 Q. So let me ask you this, Mr. Young: Did you
11 happen to observe in the Louisiana rate order that was
12 DL-07, and in at least two Oregon Board of Maritime
13 Pilots' rate orders that were attached to Mr. Lough's
14 testimony, that these both reference the importance of
15 parity in compensation and benefits within a state in
16 terms of how the state treats its state-licensed pilots?

17 A. Are you asking me if I read those orders?

18 Q. Yes.

19 A. I did not consider them in my -- constructing
20 my case for testimony in this -- in this case.

21 Q. Were you aware that the Grays Harbor pilots
22 are also licensed by the State of Washington as
23 state-licensed pilots by the Board of the Pilotage
24 Commissioners?

25 A. I would've made that assumption, yes.

1 Q. And if the table prepared by Mr. Lough shows
2 that the Grays Harbor pilots were projected to earn
3 497,000 in 2023, as a matter of policy, do you think
4 it's appropriate for the UTC to approve a substantially
5 lower level of pay for the Puget Sound Pilots?

6 A. Again, the situations are not identical. I
7 would have to, you know, examine them side by side to
8 determine, you know, if it -- what similarities occurred
9 and what differences occurred. There could be a lot of
10 reasons for why the pay would be different.

11 Q. Did you listen to Captain Moore's testimony
12 yesterday?

13 A. Yes, I did.

14 Q. Did you -- when the discussion of Grays Harbor
15 came up, do you recall him stating that one of the
16 reasons he didn't oppose the Grays Harbor 15 percent
17 increase in its tariff was because of the need to have
18 at least two pilots even though there wasn't enough work
19 for two pilots? Do you remember that?

20 A. I do remember him saying that, yes.

21 Q. And the data assembled by -- did you read
22 Captain Carlson's rebuttal testimony?

23 A. Yes, I did.

24 Q. And then -- so you did review the workload
25 evaluation and table in his testimony showing that

1 among, I think, 13 pilot groups on the list, that Puget
2 Sound Pilots were the second hardest-working in terms of
3 total hours working on task within that table. Did you
4 see that too?

5 A. I don't recall off the top of my head, but
6 probably. If it's in the table, it was probably there.

7 Q. And do you think it's an appropriate policy
8 for purposes of rate-setting involving state-licensed
9 pilots in the State of Washington for a small group with
10 low traffic, low level of overall work, to earn
11 substantially more than your recommended level of DNI in
12 this case?

13 A. I think the rates ought to be set based on the
14 cost of providing the service that's delivered.

15 Q. Well, the cost of the service that is
16 delivered includes, as the single biggest component of
17 the rate, the net income paid to pilots, does it not?

18 A. That's a possibility, yes.

19 MR. HAGLUND: Well, let's -- let me put
20 up another exhibit. If we could go to KAE-4T, Page 4.

21 No, this is KAE. This is a totally --
22 this is Ken Eriksen's testimony. We used it, and go to
23 Page 4.

24 Did you -- that's the -- okay. That's
25 great.

1 Q. (By Mr. Haglund) Okay. So this is the rebuttal
2 testimony of Ken Eriksen, and did you review that
3 testimony, Mr. Young?

4 A. I scanned it, yes.

5 Q. And one of the things that it does on a couple
6 of pages is where there is overlap between the types of
7 traffic that -- types of vessels that go into Grays
8 Harbor and that also go into Puget Sound. Grays Harbor
9 has much less diversity of ship traffic, but one of
10 those that -- where they both have the same vessels come
11 into their pilotage grounds is bulk carriers, grain
12 primarily.

13 And the upper chart here shows the cost in --
14 shows -- compares the pilotage fees in thousands of
15 dollars per assignment for a vessel going into Puget
16 Sound, specifically a five-hold dry bulk carrier vessel
17 heading into Grays Harbor along with several other
18 ports. Do you see this?

19 A. Yes.

20 Q. And the -- the -- what you see on this chart
21 is the level of charge by Puget Sound using -- the Puget
22 Sound Pilots using their proposed rates and the
23 current -- compared to the current rates for Grays
24 Harbor.

25 Do you see that the cost is substantially

1 higher, approximately \$7,000 for a movement into Grays
2 Harbor compared to less than \$5,000 in Puget Sound? Do
3 you see that?

4 A. When you say "costs," you're talking about the
5 fee -- the fee actually charged, correct?

6 Q. Yes, I am.

7 A. Okay.

8 Q. Don't you think that analyzing the pilotage
9 fee levels is a pertinent inquiry in trying to assess,
10 in a sophisticated and comprehensive way, the fair,
11 just, and reasonable level of distributable net income
12 that the Puget Sound Pilots should earn? And that's the
13 end of my question. Would you -- wouldn't it be
14 important to look at this sort of data?

15 A. Well, it depends. We have multiple garbage
16 companies providing service in King County, and we don't
17 examine the rates of the other garbage companies to
18 determine the rate for the company that's filled the
19 rate case, so I did not do that in this case either. I
20 would have to know all about the cost data that supports
21 this before I could do any kind of comparison.

22 Q. Did you -- did you happen to attend or did
23 you -- have you reviewed the public comment testimony
24 yet?

25 A. I was at the hearing.

1 Q. Did you review the written submissions?

2 A. I have not had time to do that, no.

3 Q. So let me represent to you that one of the
4 exhibits in this case is a letter from a pilot.

5 MR. HAGLUND: Whoops. If we could --
6 actually, I wanted to go back to one other page of
7 this -- of that exhibit, and that's on Page 5. The
8 upper or the lower -- or, I'm sorry, you need to get to
9 Page 5.

10 Q. (By Mr. Haglund) The other example where
11 there's overlap in vessel type calling both Puget Sound
12 and Grays Harbor is this one, and this is for small
13 tanker vessels. Again, you see significantly higher
14 pilotage costs for that small tanker going into Grays
15 Harbor compared to Puget Sound; correct?

16 A. That appears to be what the chart is showing,
17 yes.

18 Q. And doesn't this tell you, in no uncertain
19 terms, that a higher level of DNI could easily be
20 absorbed given the relative difference in rates for --
21 in terms of higher level for Puget Sound?

22 A. I'm not sure what you mean by "absorbed."

23 Q. Well, the rates would not be higher in Puget
24 Sound if they -- the proposed rates of PSP for this
25 class of ship, it's all on the basis of tonnage and then

1 the hours devoted to the pilotage assignment, of course,
2 but this is the comparison at PSP's proposed pilotage
3 rates which have a DNI well in excess of \$500,000.

4 MR. CALLAGHAN: Your Honor, I'm going to
5 have to object again. This is outside of the scope of
6 Mr. Young's testimony. He did not provide any testimony
7 regarding comparability.

8 JUDGE HOWARD: Well, I -- I did -- I did
9 find it important to allow Mr. Haglund to fully explore
10 bases for Mr. Young's testimony and whether he
11 considered some of these factors. I think we've
12 probably reached the limits of the relevance of this
13 particular issue, but I did want to allow Mr. Haglund
14 some leeway to explore Mr. Young's opinions on this.

15 MR. HAGLUND: And I've reached the end of
16 that topic. I appreciate your allowing it, your Honor.

17 Q. (By Mr. Haglund) Moving on to the topic of DEI,
18 there's a reference in staff's testimony to recognizing
19 the importance of DEI, but there's no comment
20 whatsoever, Mr. Young, in your testimony or that of your
21 colleague, on the testimony of the ten witnesses in this
22 case who state unequivocally that the lack of
23 competitive pay and benefits for Puget Sound Pilots will
24 hurt their DEI efforts.

25 Did you give any consideration to that

1 testimony, sir?

2 A. No. Our review of the DEI accounts were
3 limited to the actual expenses during the test year.

4 Q. Now, I'd like to turn to a subset of the DNI
5 issue that I omitted.

6 On your exhibit, which is the sole place where
7 you deal with DNI, on that tabulation which is MY-9 --
8 if we could pull that back up -- you recommend that the
9 medical insurance premiums of \$1.88 million be included
10 in DNI; correct?

11 A. Yes.

12 Q. Isn't that completely inconsistent with the
13 language the commission used in Order 9 that DNI is
14 distributable net income? If you add a cost of medical
15 insurance, which is a benefit, to DNI you're not
16 increasing distributable net income, are you?

17 A. Well, the -- the direct answer to your
18 question is no, but I believe that the directive in
19 Order 9 from the commission was that the pilots should
20 be paying their own medical premiums. If we do not
21 include this cost as part of the DNI calculation, then
22 it would've removed that expense out of the equation
23 entirely, which then would have eaten into each pilot's
24 individual income.

25 Q. So PSP appreciates staff recommending that

1 this cost be recovered in the tariff, but let me ask you
2 this question. The universal approach of other state
3 regulators of pilot groups is to use the term "target
4 net income" to be defined as the amount of income that
5 net income that the pilot is supposed to have after all
6 expenses, benefits included, are covered by the tariff.

7 Would you agree that it would be appropriate
8 to consider changing DNI to target net income so that
9 there's -- there can be an apples-to-apples comparison
10 with other jurisdictions in the United States where that
11 is the predominant term?

12 A. Yeah. I am not an expert on the, you know,
13 terminology. If that's the correct term, that's -- that
14 should be the correct term then.

15 Q. Okay. Now, let's turn to the topic of auto
16 adjusters. Did you -- if we could pull up JR-23,
17 Page 71.

18 While, it's coming up, Mr. Young, let me
19 represent to you that this is a page from the final
20 report that a cost of some \$600,000 that the legislature
21 commissioned, which was the Washington State pilotage
22 analysis, some, I think, 200 pages, and this particular
23 page deals with auto adjusters to the tariff.

24 And if you could call out the best practice at
25 the very bottom, it states: "Best practice: The tariff

1 and fee-setting process should include automatic
2 adjusters, which help avoid the need for annual
3 reviews," and rate cases for that matter.

4 Do you concur with the policy that automatic
5 adjusters to a tariff have the potential to reduce the
6 need for expensive, time-consuming rate cases?

7 A. I do, and I believe I stated that in my
8 testimony.

9 Q. But you only -- you only recommended one
10 automatic adjuster, that being the COLA, cost of living
11 tied to the CPI for Seattle/Bellevue; correct?

12 A. That's correct.

13 Q. Okay. And for the record, PSP supports your
14 position on that. It's the same as ours, but I want to
15 ask you about a couple other adjusters.

16 Did you review the testimony of
17 Michael Titone, a former shipping industry executive, as
18 well as employee in the financial area, chief financial
19 officer and industry liaison for the Columbia River Bar
20 Pilots for a number of years?

21 A. I'm not recalling that. Again, if it was with
22 the initial filing, I probably scanned through it, but
23 I -- it's not clear in my memory right now.

24 Q. Okay. This is -- it's MJT-01, and this is
25 actually rebuttal testimony. Let's call it up. I have

1 some particular questions I'd like to put to you, and if
2 we could go to Page 7.

3 And when you were reviewing the Louisiana
4 Pilotage Fee Commission rate order that we referenced
5 earlier, which I think is DL-06, did you happen to
6 observe that that pilotage rate regulator adopted an
7 automatic tariff adjuster for new licensees as well as a
8 reduction automatic adjuster for retirement?

9 A. Yeah, that's not -- I don't recall. I'm
10 sorry.

11 Q. Okay. Wouldn't you agree that where the
12 commission, in this case, will ultimately determine
13 precisely what distributable net income or target net
14 income is supposed to be for going forward with the new
15 rate order and also what the level of benefits and other
16 pilot-specific annual costs are, that it's a relatively
17 simple calculation to derive the total gross cost of
18 each pilot position -- licensed pilot position at PSP?
19 That's a relatively simple calculation to make once the
20 commission makes these decisions regarding DNI,
21 et cetera; correct?

22 A. I'm -- I'm sorry. I'm not quite following.
23 Could you try that one more time?

24 Q. Yeah. I'll try it another -- I'll try it
25 again.

1 You'd agree, wouldn't you, that one of the --
2 that, ultimately, this commission is going to make a
3 decision on a distributable net income? They're going
4 to pick a number that they put into their order; right?

5 A. Yes.

6 Q. And they will also approve the different
7 insurances, medical insurance, hopefully, license
8 defense insurance, other insurances, plus the license
9 fee, those are going to be known numbers on a per-pilot
10 basis; correct?

11 A. Well, I think that was two questions, but,
12 yes, on a per-pilot basis, I would agree with you. And,
13 yes, the commission will determine the correct amounts
14 for those.

15 Q. Okay. And let's just, for purposes of round
16 numbers in this question, assume that the DNI is set and
17 then you add the benefits and it adds up to \$700,000.
18 It would be relatively easy, wouldn't it, to have an
19 auto adjuster to the tariff where it went up by the
20 percent that \$700,000 bears to the total revenue
21 requirement. It's going to be in the neighborhood of
22 potentially 1-point-something percent, that it would be
23 relatively easy to have an automatic adjuster that has
24 the tariff go up with new licensees or go down by the
25 same amount with a retiree; would you agree?

1 A. Well, I would agree that it would be easy, but
2 that's ignoring other factors that would -- that would
3 affect total revenue requirement.

4 Q. Okay. Well, you've answered my question and
5 I'll -- I'll move on.

6 And would you also agree that when it comes to
7 PSP's retirement plan that the number of existing
8 retirees is a known number throughout the year?

9 A. I would agree that it can be determined how
10 many have actually retired, yes.

11 Q. And would you agree that once a -- based on
12 your knowledge of the materials in this case, would you
13 agree that when a PSP pilot retires, that that pilot
14 then receives a fixed amount per year that's paid
15 monthly and it is determined at the time of their
16 retirement? It's a calculation of years of service
17 times 1.5 percent times the average of their last
18 three years of DNI. And once that's determined, the
19 amount is set and that's their annual retirement going
20 forward. You're aware of that, are you not?

21 A. Without being aware of the details of the --
22 the rules that require that.

23 Q. Okay. Well, I'd ask you to assume that it's
24 that simple of a calculation: Time of service times
25 1.5 percent times three-year average of your last three

1 years.

2 Given the ease of that calculation, wouldn't
3 you agree that it's relatively easy to keep track of the
4 annual cost of your existing retirees?

5 A. It should be.

6 Q. And at the end of a given calendar year, it --
7 based upon information received from those retiree --
8 those pilots who are close to retirement, one could
9 pursue those inquiries and determine, with a fair level
10 of confidence, how much the cost in that next year would
11 increase with new retirements or potentially decrease
12 with deaths. Wouldn't you agree?

13 A. Well, I would -- you know, we can always
14 speculate, you know, who might pass away and who might
15 retire. You know, there's actuarial data, et cetera,
16 but until that actually happens it's not known and
17 measurable.

18 Q. Well, no, I'm -- I'm only talking about known
19 deaths, not projected deaths.

20 A. Okay.

21 Q. So --

22 A. Sorry.

23 Q. Yeah. No problem.

24 But so my question is: Wouldn't you agree
25 that the UTC could follow the example of multiple other

1 states where the pension costs are the subject of an
2 annual surcharge that's designed to collect the
3 necessary funds to pay the pension benefits and that it
4 is adjusted on an annual basis taking into account the
5 known and measurable changes from that year and the
6 known and measurable data concerning known retirement
7 dates in the next year and one could have a surcharge
8 that is tracking that cost with any over or under
9 collection being adjusted -- being carried forward to
10 the next year? That's something that could be done;
11 correct?

12 A. Mathematically, yes, but that's not how we set
13 rates here. It hasn't been how the commission has set
14 rates in the past. So, again, it ignores other -- other
15 factors.

16 The automatic adjusters that were proposed
17 were proposed to adjust the actual tariff rate rather
18 than, you know, specifically examining any of the
19 expense amounts as you're suggesting, for instance, for
20 retirement costs.

21 Q. Isn't it true, Mr. Young, that the legislature
22 specifically authorized the UTC to make use of automatic
23 tariff adjusters for its pilotage rate-setting cases
24 provided that they were reasonable and justified by the
25 evidence? Broad authority granted to the UTC to use

1 automatic adjusters, isn't that your understanding?

2 A. Yes. My understanding is that is in the --
3 either the statute or the rule, but I can't remember
4 which but they allow automatic adjusters.

5 Q. I can represent to you it's definitely in the
6 statute.

7 And if these automatic adjusters were used,
8 wouldn't they reduce your regulatory burden as an
9 agency?

10 A. Absolutely.

11 Q. And if -- let me ask you this: From the
12 standpoint of the UTC staff and the regulatory burdens
13 that a pilotage case can impose upon the agency, would
14 you agree, as a policy matter, it would be preferable to
15 have in place a tariff that actually encourages -- or a
16 tariff that establishes conditions that move the
17 interval between general rate cases from 18 months to
18 five or more years? That would be a good outcome,
19 wouldn't it?

20 A. It would, but the interval and the triggers
21 for the reviews is the key issue here.

22 Q. Triggers for the reviews.

23 A. So, yeah, if you're proposing an automatic
24 adjuster that would be in place for five years, at what
25 point do the actual costs get reviewed? And I'm talking

1 about in total.

2 Q. Sure, but let me just share some other
3 experience with -- in other states.

4 When it comes to the COLA you're proposing,
5 you're not proposing a time limit on it, are you?

6 A. I did not, no.

7 Q. Okay. And I'm not aware of -- well, there are
8 some states where there are -- there are exhibits in
9 this -- in David Lough's testimony. There are at least
10 two orders where rather than tie it to the CPI, the --
11 this is the case in Florida in a couple of those
12 exhibits, where they actually specify a list of, I
13 think, ten years' worth of specified percentages that
14 were actually agreed to by the parties rather than tie
15 it to a specific CPI. But, generally speaking, those
16 states that have a COLA on their -- applicable to their
17 tariff for a pilotage ground, there's no time limit on
18 the COLA.

19 So let me ask you this: If -- if the COLA, as
20 that report I referenced earlier, stated will encourage
21 less frequent rate cases, wouldn't you agree that if for
22 some reason the COLA is too high or too low or there are
23 other developments that warrant either industry or the
24 pilot group petitioning for a new rate case, they should
25 be the ones to trigger the change and the -- and the UTC

1 can simply wait for that to happen, can't it?

2 A. Yes, that's -- that is how it works now,
3 right?

4 Q. Yeah.

5 A. Any party that has an interest can ask for a
6 change to the tariff.

7 Q. If a gas company likes their rates for ten
8 years and the consumers do too, you don't have to have a
9 rate case for ten years, do you?

10 A. Well, the actual -- the answer would be no,
11 but I believe that the commission would prefer that --
12 that companies are having their rates reviewed more
13 often to make sure the rates maintain their fairness,
14 reasonableness, and sufficiency.

15 Q. Sure. Okay. I -- let me just review my
16 notes.

17 THE STENOGRAPHER: And at a good stopping
18 point, the Court Reporter would like a break. We've
19 been going for almost two hours.

20 JUDGE HOWARD: Certainly. I think this
21 is our last witness and we may be done very shortly
22 here.

23 MR. HAGLUND: That's --

24 (Pause in the proceedings.)

25 MR. HAGLUND: I think that's all I have.

1 Thank you.

2 JUDGE HOWARD: All right. Thank you.

3 Mr. Callaghan, any redirect?

4 MR. CALLAGHAN: Yes, your Honor. I will
5 be brief.

6

7

REDIRECT EXAMINATION

8 BY MR. CALLAGHAN

9 Q. Mr. Young, you were asked by counsel for PSP
10 whether or not you -- you read through or evaluated
11 comparability in this case; correct?

12 A. That's correct.

13 Q. All right. And staff did not in this
14 instance; is that right?

15 A. That's correct.

16 Q. Why is that?

17 A. Well, apart from the volume of data, there
18 was -- staff had limited resources to address this.
19 It's not a requirement and we chose to focus on the
20 actual expenditures and reviewing those actual costs
21 which I think had increased significantly since the
22 previous case.

23 Q. And in addition to those reasons, is it also
24 true that staff's position was that PSP had not met its
25 burden?

1 MR. HAGLUND: Objection. Leading,
2 your Honor.

3 JUDGE HOWARD: I'm going to deny the
4 objection.

5 THE WITNESS: So I get to answer the
6 question; is that correct?

7 JUDGE HOWARD: Go ahead, yes.

8 THE WITNESS: Yes, absolutely. Staff has
9 been frustrated from the beginning of the lack of
10 support and calculations for the basic expenditure data,
11 and, yeah, it's just been, you know, difficult to review
12 this.

13 And getting into the area of
14 comparability requires an apples-to-apples. There's --
15 you know, that would require many, many hours to break
16 those down to that point where we could compare them
17 evenly. So, yeah, the lack of support for a lot of it
18 definitely drove our direction in this case.

19 Q. (By Mr. Callaghan) And in the parts of this
20 case that staff did analyze, you felt that there -- did
21 you feel that there was insufficient support for those
22 parts?

23 A. Yes, absolutely. As I responded to
24 Mr. Haglund earlier about the retirement, you know, we
25 received a list of people with dollars attached to their

1 names. I have no idea how those dollars were calculated
2 or why it was higher in 2023 compared to 2022, which we
3 didn't get, or 2021. So, yeah, there was really not
4 much for us to review there.

5 Q. So if there was insufficient evidence for
6 those pieces of PSP's proposal, would there have been
7 any point in engaging in the comparability analysis if
8 you just felt they hadn't met their burden in those
9 other aspects of the case?

10 A. Yeah. Again, you know, the actual
11 expenditures are concrete numbers and we can look at
12 general ledgers, we can see what checks they wrote.

13 When you're talking about issues like
14 comparability, it's a little bit more ethereal. So
15 again, just way more effort than we had the resources to
16 direct towards that.

17 Q. Okay. And Mr. Haglund asked you about staff's
18 position on the automatic adjusters. Do you recall
19 that?

20 A. Yes.

21 Q. And in your testimony, you go through your
22 rationale for rejecting most of those adjusters;
23 correct?

24 A. Yes. Those -- most of the adjusters were
25 designed to attain a specific revenue amount, which I

1 believe, you know, feeds into the target DNI, I suppose,
2 is the correct term. And that can be, again, is not how
3 the commission sets rates. You know, the revenue
4 requirement is not a guarantee of earning.

5 Q. All right. And Mr. Haglund asked you about
6 wouldn't it be easier to have these adjusters? Wouldn't
7 it reduce the burden on the commission and staff to have
8 these adjusters? Do you remember those questions?

9 A. Yes.

10 Q. All right. And despite that, you still hold
11 by your position in your initial testimony on the
12 automatic adjusters; correct?

13 A. Yes. I mean, the commission has a duty to
14 perform, and that's -- that entails setting fair, just,
15 reasonable, and sufficient rates.

16 Q. And is that more important than the issues of
17 commission workload and so on and so forth?

18 A. Yes, absolutely.

19 Q. All right. So even though it might be easier
20 for you, personally, you are -- you are against those
21 adjusters; correct?

22 A. Yes.

23 Q. All right. That's all the questions I have.

24 JUDGE HOWARD: All right. Just because I
25 do not want an objection doesn't mean I won't -- I won't

1 point out a leading question if that occurs more.

2 All right. You were finished,

3 Mr. Callaghan?

4 MR. CALLAGHAN: Yes, your Honor. Thank
5 you.

6 JUDGE HOWARD: Are there any questions
7 from the bench for this witness?

8 COMMISSIONER DOUMIT: No, your Honor.

9 CHAIR DANNER: No, your Honor.

10 COMMISSIONER RENDAHL: No, your Honor. I
11 believe we have a number of bench requests, though, that
12 we will be submitting.

13 JUDGE HOWARD: All right. Thank you,
14 Mr. Young, for your testimony.

15 THE WITNESS: Thank you.

16 JUDGE HOWARD: You are excused.

17 All right. Before we adjourn in just a
18 moment here, we have a couple of brief procedural
19 matters. As Commission Rendahl noted, we'll be issuing
20 some clarifying bench requests, and those will be
21 certainly posted in the near future here.

22 In terms of briefing, we have
23 post-hearing briefing on the schedule. The initial
24 brief's due on April 28th. The post-hearing reply
25 brief's due on May 12th.

1 For page limits, we're planning -- we're
2 going set the page limit for the initial post-hearing
3 briefs as being 60 pages, 6-0, pages in length. And the
4 post-hearing reply briefs will be limited to 20 pages in
5 length.

6 And then on the issue of public comments,
7 Mr. Callaghan, was staff anticipating submitting a
8 public comment exhibit which would be marked as a bench
9 exhibit?

10 MR. CALLAGHAN: Yes, your Honor, in
11 response to the usual bench requests.

12 JUDGE HOWARD: Yes. I'm not recalling. I
13 don't believe we normally issue a bench request that's
14 specifically asking for the public comment exhibit. I
15 believe sometimes that it's simply submitted following
16 the hearing. In this case, it would be staff.

17 However, is one or two weeks sufficient?
18 Do you prefer two weeks over one?

19 MR. CALLAGHAN: I have not specifically
20 talked to the staff member who usually does this
21 recently, so I would prefer two.

22 JUDGE HOWARD: All right. Two weeks from
23 today would be the deadline for the public comment
24 exhibit then. Thank you.

25 MR. CALLAGHAN: Thank you, your Honor.

1 JUDGE HOWARD: Are there any questions
2 from the parties before we adjourn?

3 MR. HAGLUND: When -- your Honor, when
4 will a transcript of the hearing be available?

5 JUDGE HOWARD: It's normally posted to
6 the docket within about -- about a week -- about a week.

7 MR. HAGLUND: And could we possibly move
8 up the public comment exhibit to one week? If we get it
9 two weeks out with one week to go on the briefing, it
10 makes it hard to take it into account. It seems like if
11 it's not much material, it should be relatively easy to
12 assemble.

13 JUDGE HOWARD: Given that this -- there
14 should be a relatively limited number of comments and
15 there's the concern from one of the parties,
16 Mr. Callaghan, I'm going to reverse myself here and
17 suggest that we go -- I -- let's do a one-week deadline
18 on the public comment exhibit. If staff does need more
19 time, staff can request that and we can consider
20 two weeks. So the public comment exhibit would be due
21 in one week from today.

22 MR. CALLAGHAN: Thank you, your Honor.

23 JUDGE HOWARD: All right. Any further
24 questions from the parties?

25 MR. HAGLUND: None from PSP, your Honor.

1 Thank you.

2 MS. DeLAPPE: Just a thank you from PMSA
3 for everyone.

4 JUDGE HOWARD: Thank you.

5 MR. CALLAGHAN: Thank you to the Court
6 Reporter. I'm so sorry.

7 MS. DeLAPPE: Yes.

8 MR. HAGLUND: Thanks to all the
9 Commissioners, the Court Reporter, and your Honor.

10 JUDGE HOWARD: Thank you all. Thank you
11 to all the parties, their witnesses, and their
12 attorneys.

13 We are adjourned. Thank you.

14 (Hearing adjourned at 2:55 p.m.)

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STATE OF ARIZONA)
)
COUNTY OF MARICOPA)

I, Nicole A. Bulldis, RPR, a Certified Court Reporter, do hereby certify under the laws of the State of Washington:

That the foregoing evidentiary hearing was taken stenographically by me on April 7, 2023, and transcribed under my direction;

That the witnesses were duly sworn to testify truthfully, and that the transcript of the hearing is full, true, and correct to the best of my ability;

That I am not a relative, employee, or counsel of any party to this action or relative or employee of such counsel, and that I am not financially interested in the said action or the outcome thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of April 2023.




Nicole A. Bulldis, RPR
WA CCR. No. 3384