BEFORE THE STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND PILOTS, Respondent.	Docket TP-220513

PUGET SOUND PILOTS'

POSTHEARING OPENING BRIEF

April 28, 2023

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I. INTRODUCTION.

1. In its first-ever pilotage general rate case that generated Order 09 in November 2020, the Washington Utilities and Transportation Commission ("Commission" or "UTC") concluded that the Puget Sound Pilots ("PSP") failed to provide sufficient evidence to carry its burden of proof on two key issues: the comparability of the Puget Sound pilotage district to other U.S. pilotage grounds and that compensation levels were impacting PSP's "ability to attract and retain pilots." But after reaching these conclusions, the Commission went on to state:

> We note, however, that PSP's failure to meet its evidentiary burden in this case in no way precludes the Commission from considering these factors in subsequent general rate proceedings.[1]

2. As the record in this second general rate case demonstrates, PSP took the Commission at its word and submitted exhaustive evidence supporting findings that PSP is not only highly comparable to other major U.S. pilot groups and substantially undercompensated, but also that PSP responded in good faith to the Commission's directives "to study its organizational efficiency"[2] and to develop "a plan to transition to a fully funded, defined-benefit retirement plan."[3] Importantly, PSP's evidence also addresses significant new issues in this proceeding. These include the ratemaking standard that should apply to the funding of a compulsory pilotage system, strategic initiatives to diversify PSP's pilot corps, shipping economics testimony rebutting the Pacific Merchant Shipping Association's ("PMSA") false contention that pilotage rates impair the competitiveness of Washington's ports and clearly demonstrating the insignificance of pilotage rates to where ships call and the proposed use of automatic tariff adjusters to stabilize rates and reduce the frequency of contested general rate cases.

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[1] Order 09 ¶ 163.
[2] *Id*. ¶ 109.
[3] *Id*. ¶ 191.

3. In sharp contrast to PSP's robust evidentiary record that includes over 800 pages of written testimony from 26 witnesses and over 240 exhibits, PMSA submitted substantive testimony on behalf of just four witnesses based upon the very same arguments that largely prevailed in Order 09. Rather than engage experts on core issues including compensation, fatigue, and pension law, PMSA relied almost entirely on the testimony of its Vice President Captain Michael Moore. With due respect for Captain Moore's experience and U.S. Coast Guard service, his testimony in this rate case extends far beyond the scope of his expertise and, as demonstrated during his cross-examination and discussed further below, lacks credibility on multiple fronts.

4. Even more remarkably, the UTC Staff performed little to no analysis of PSP's filings, presented only a very modest level of written testimony and simply ignored most of the major issues in this proceeding. Most surprising, UTC Staff took no position – or, at minimum, failed to explain or support its position – on the fundamental questions of comparability and the need for competitive pilot compensation and benefits, noting that such consideration required "just way more effort than we had the resources to direct towards that."[4]

5. Stripped down to its essentials, this case involves five primary issues and two secondary issues. The five major issues include:

    1. Whether the 2018 statutory mandate that the UTC adopt pilotage rates that are "fair, just, reasonable and sufficient" for the provision of pilotage services should be interpreted to embrace the "best achievable protection" standard or, at a minimum, mandate the funding of a world-class pilotage system that is commensurate with Washington's nation-leading oil spill prevention scheme;

    2. Whether pilotage costs are such an insignificant component of vessel port costs relative to the massive resources and profits earned by commercial shippers that "rate shock" is not a relevant consideration in the pilotage ratesetting context because even a doubling or tripling of PSP's pilotage fees would have no effect on the number of ships calling Puget Sound;

[4] Tr. at 855:15-16.

3. Whether the interrelated goals of attracting a best-in-class pool of pilot trainee candidates and aggressively pursuing diversification of PSP's pilot corps require a nationally competitive level of pay and benefits;

4. Whether Washington should embrace a leadership role as the first coastal state in the U.S. regulating state-licensed pilots to transition a traditional pay-as-you-go pension plan to a fully funded defined benefit plan; and

5. Whether the tariff funding the Puget Sound pilotage district should include automatic tariff adjusters designed to true-up the tariff annually to account for inflation, new licensees or retirees, traffic volatility, and pension costs.

6. The two secondary issues in terms of long-term precedential impact are:

   1. Whether TOTE Maritime's two roll-on/roll-off vessels should enjoy a special pilotage rate discount compared to ships of similar volumetric size; and

   2. Multiple expense items that are still contested by the parties.

7. Before addressing each of these seven issues in turn below, it is important to acknowledge the public commentary that the Commission has received from over 30 organizations and individuals, which is overwhelmingly in favor of PSP's positions on the standard that should apply to pilotage ratesetting and the need for nationally competitive pilot pay and benefits.

8. As to the imperative of incorporating environmental protection in the ratesetting standard, no less than 20 Washington environmental groups weighed in, emphasizing the critical "role of the PSP in protecting the Salish Sea ecosystem from accidents and oil spills," which requires "nationally competitive compensation and benefits … and use of best work and rest practices that are consistent with other critical transportation services."[5] Jay Manning of Cascadia Policy Solutions, an environmental attorney who served as both the Chief of Staff for Governor Christine Gregoire and the Director of the Washington Department of Ecology, urged adoption of the "best achievable protection" standard, noting that placing a maritime

[5] 18 Washington environmental groups' March 27, 2023 letter at 1-2.

pilot "aboard these vessels to ensure safe transit through our waters is one of the biggest reasons why we have so significantly reduced oil spills in marine waters."[6] Mr. Manning also emphasized that "one mistake could be catastrophic," noting that "Prince William Sound is still recovering 34 years after the Exxon Valdez spill."[7]

9. Educators likewise lauded PSP for its community engagement and commitment to improving diversity, equity and inclusion not just in PSP's own ranks, but in the maritime professions more broadly. These include the chair of the California Maritime Academy's annual Women in Maritime Leadership Conference[8] and four Washington educators involved in the Maritime High School, Sound Experience's environmental tall ship and Sea Potential's youth enhancement programs. Their testimony noted that PSP's "commitment to mentorship, workforce development, equity and DEI efforts within the industry and in the community"[9] has been ongoing for years, that a stronger tariff would support "more community outreach and engagement" and that the pilots "bring the cool factor to this work with their expertise."[10] As Maritime High School teacher Mia Mlekarov noted, "[i]t's not just one or two pilots, either – no fewer than a dozen Pilots have engaged directly or indirectly in supporting learning experiences for my students."[11]

10. Critically, even responsible shipping industry leaders weighed in to support PSP. Captain Michael Ross, who is Vice President of Vessel Operations and Vessel Safety for PMSA member Westwood Shipping Lines and currently serves as the designated Foreign Flag representative on the Board of Pilotage Commissioners, made it a point to "go on record by

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6 Cascadia Policy Solutions' March 21, 2023 letter at 1.
7 *Id*. at 2.
8 Staff Comment Matrix filed April 13, 2023, Vineeta Dhillon California Maritime letter at 1.
9 Tr. at 77:4-6
10 *Id*. at 78:7-8; 75:16.
11 Staff Comment Matrix filed April 13, 2023, Mia Mlekarov, Maritime High School letter at 1.

saying how important the PSP is to our State and local economy."[12] On the issue of fair pilot compensation, Captain Ross was emphatic, stating:

> It is important to note that fair compensation and working rules for these resolute individuals be considered. Current and future pilot manning levels are front of mind. While present-day commercial needs are important, we also have to look forward to the future so new and qualified talent is attracted to the region to fill these challenging jobs. The marine industry, specifically, the manning qualifications are only going to get more complex given training, rest periods, commercial needs, and regulatory requirements, as such the Washington Utilities and Transportation Commission needs to be mindful of such challenges ahead.[13]

11. John J. Malone III, the Port Captain for Schuyler Line Navigation Co., a U.S. flag shipping company, also supported increasing the pilotage tariff to address pilot compensation. Mr. Malone's reasoning is instructive, and reflects the responsible industry position:

> As a small operator, we are always looking at the return on our costs and ways to improve them. However, one area I personally feel we should not cut on is pilotage costs. You get what you pay for, and although the business side of me would love for pilot fees to be lower, the professional mariner side of me expects that a lower rate will bring applicants with lower standards as the better ship handlers will opt for bigger ports and money. Not everyone chooses a position because they love the area, there is more to it. If the Puget Sound Pilots need to address an increase in tariff to ensure a stronger future across the board in the Sound, then it is well worth supporting. The Sound relies on strong professionals to ensure the continued safe operation daily of the many US and foreign vessels that transit her waters. They need to be properly compensated to ensure their future success and the safety of the extensive Puget Sound.[14]

12. The PMSA and Liberian Shipowners' Council are trade groups representing foreign flagged shipping interests with a well-documented record of deploying strategies that externalize the cost and risk of their operations onto the public. The fact that these special interest groups oppose PSP's general rate case should come as no surprise. But what the public comments in

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[12] Capt. Mike Ross, Westwood Shipping letter dated March 31, 2023 at 1.
[13] *Id*.
[14] Capt. John J. Malone III, Schuyler Line Navigation Company letter dated April 4, 2023 at 1.

this rate case demonstrate is that the PMSA and its cohort stand in isolation against the broad coalition of responsible stakeholders who understand the need to properly fund a world-class pilotage system on Puget Sound for the benefit of Washington's economy, its environment and, most importantly, its people.

13. For the convenience of the Commission, most of the charts and tables referenced in this brief are contained in the attached Appendix. Citations to these materials are to the relevant page or pages in the Appendix and to the record.

II. <u>THE IMPORTANCE OF COMPULSORY PILOTAGE AND THE APPLICABLE RATESETTING STANDARD</u>.

A. <u>The Pilotage System is Critical to Protecting Puget Sound</u>.

14. Maritime pilotage is the state's most important means of preventing major marine casualties. According to a 2017 study entitled *"Marine Pilotage in Canada: A Cost Benefit Analysis,"*[15] prepared by Transportation Economics & Management Systems, Inc., pilotage reduces the risk of an allision, collision or grounding by 99.98%. This percentage increases to 99.998%, which represents almost infinitesimal risk of 0.0018% (less than two thousands of 1%), if pilots are combined with escort tugs. The study also shows that the cost of the entire pilotage system in Canada delivers economic and safety benefits to the country at a ratio of 21.9 to 1. In other words, the $208 million spent on Canadian pilotage buys at least $4.56 billion in economic benefit.

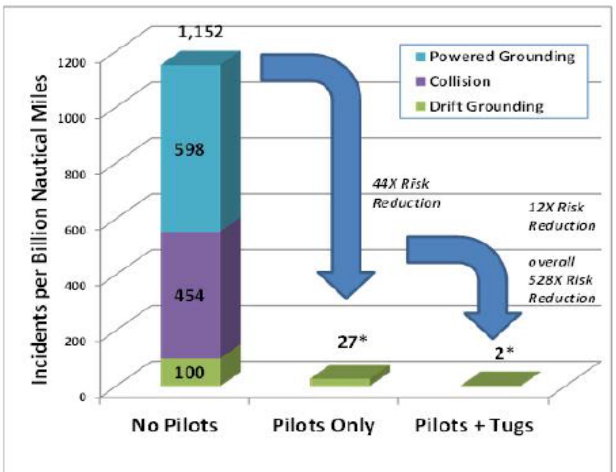
15. Based upon nine years of consistent vessel casualty data from the Great Belt of Denmark, one of the only places in the world where it is possible to scientifically collect empirical data regarding the effectiveness of pilotage, researchers compared the statistical probabilities of a

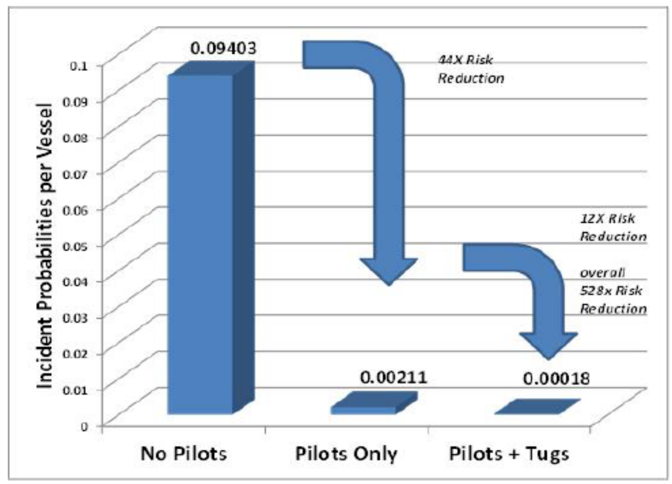
[15] Ericksen, Exh. KAE 3.

vessel grounding with and without a pilot. The results were stunning: vessels under pilotage had a 100% safety record compared to nearly 10% probability of grounding without a pilot.[16]

16. The study concludes that pilotage "is the strongest single safety measure that can be employed to reduce the risk of maritime accidents," reducing the accident risk "by a factor of at least 44 times."[17] The dramatic risk reduction effect of pilots and tugs is graphically displayed in the charts[18] below:

Exhibit 2-6: Risk Reduction Effect of Pilots and Tugs





17. In examining the cost benefits derived from a pilotage system, the Canadian study identified three categories: safety cost benefits; productivity and efficiency benefits; and reductions in the economic impacts of maritime accidents. Safety benefits are obvious. The productivity benefits are a function of the value that pilots add to the efficiency of shipping operations, particularly "through the introduction of improved navigational procedures."[19] For example, on pilotage grounds throughout the U.S., when a new generation ultra-large cargo ship is planning a port call in that district, pilots utilize simulators and other data to determine

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[16] *Id.* at 13.
[17] *Id.* at 19.
[18] *Id.* at 22.
[19] *Id.* at 33.

whether those vessel calls can be safely executed and, if so, develop the navigational procedures to accommodate those larger ships. Third, in assessing the accident-avoidance benefit of pilotage, the Canadian study included two case studies, one identifying indirect safety benefits to a port from pilotage and another citing the indirect costs of a port shutdown following a minor oil spill.[20] In this rate case, shipping economist Ken Eriksen testified that a sophisticated cost-benefit analysis of the pilotage system serving Puget Sound would also show "very significant" cost benefits.[21]

18. The key component of any compulsory pilotage system is its pilots, experienced mariners who have reached the highest skill levels in the maritime sector and are commonly referred to as being at the very top of the mariner profession. Rear Admiral Brian M. Salerno, the senior Coast Guard official responsible for navigation safety, described the highly developed skills and degree of care expected of pilots as follows:

> Each day, pilots are asked to take all sizes and types of vessels through narrow channels in congested waters where one miscalculation could mean disaster. They are trained, highly professional individuals, whose judgments must be spot-on for the hundreds of decisions they must make at every turn to bring a vessel safely to its berth or out to sea.[22]

19. Importantly, although a pilot is not a government employee, the pilot performs a public service. The state-licensed pilot, including every member of PSP, exercises judgment that is independent of the economic interests of the shipowners, is answerable only to the State of Washington that licenses and regulates pilots and has as a sole objective to protect state waters by preventing ships from engaging in unsafe operations. In this respect, the principal customer

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[20] *Id*. at 68.
[21] Eriksen, Exh. KAE-1T at 42:23-24.
[22] Paul G. Kirchner, *A Career as a Ship Pilot*, PROCEEDINGS OF THE MARINE SAFETY & SECURITY COUNCIL, THE COAST GUARD JOURNAL OF SAFETY & SECURITY AT SEA, Fall 2008, at 9.

of the pilot's service is not the shipowner or operator, but rather the state, its citizens and the public interest.

20. As stated in the testimony of Clayton L. Diamond, Executive Director-General Counsel for the American Pilots' Association, "state-licensed pilots perform what is a public service and they are 'assimilated to public officers.'" Indeed, the independence of the pilot and the public service character of their work find strong support in the U. S. Supreme Court's 1955 decision in *Bisso v. Inland Waterways Corp.*,[23] where the Court declared:

> Pilots hold a unique position in the maritime world and have been regulated extensively both by the State and Federal Government. Some state laws make them public officers, chiefly responsible to the State, not to any private employer. Under law and custom they have an independence wholly incompatible with the general obligations of obedience normally owed by an employee to his employer. Their fees are fixed by law and their charges must not be discriminatory. As a rule no employer, no person, can tell them how to perform their pilotage duties.[24]

21. While the PMSA's Captain Moore acknowledges that pilots are "critically important" when a vessel is in pilotage waters, he stubbornly stood by his position that there have been no "significant or material changes in vessel risks or risks to pilots since the last rate case concluded in late 2020."[25] Then, after reaffirming this extreme position, Captain Moore proceeded to admit that increasing ship sizes increases the risk and challenge of piloting, that a 23,000 TEU container ship proposed to call Puget Sound this spring presents an increasing risk, that a recently approved major oil project in Alaska will increase risk through significantly greater numbers of oil tanker transits into Puget Sound and that high stacking of wind turbine parts that block visibility from the bridge is a new risk, but not one that Captain

[23] 349 U.S. 85 (1955).
[24] *Id*. at 93-94.
[25] Tr. at 620:19-23.

Moore is aware pertains to Puget Sound.[26] Plainly, the risk and difficulty of piloting on Puget Sound continues to increase and PMSA's contrary position is inconsistent with the record and Captain Moore's own admissions.

22. The enormous cost benefits of the pilotage system to Washington State and the economic insignificance of pilotage fees to the commercial vessels that call here leave no doubt that the pilotage system must be funded at a level that maximizes accident prevention capability.

B. <u>The Unscrupulous Practices of a Significant Segment of Shippers Present Serious Risk to Puget Sound and Its Pilots</u>.

23. Approximately 80% of global container shipping is controlled by just three dominant carrier alliances made up of some of the world's largest transportation companies. During the Covid-19 pandemic, these foreign companies realized record profits while raising shipping rates by as much as 1,000%, contributing to inflation and causing serious harm to American businesses and consumers. This conduct has drawn heavy criticism and congressional action in the form of the Ocean Shipping Reform Act of 2022 that is discussed in the testimony of PSP Executive Director Charles Costanzo.[27]

24. Although the shipping industry's high-profile exploitation of an unprecedented global public health emergency recently cast it in the spotlight, the deeply problematic practices of large foreign ocean carriers are not a new development. Rather, these companies have long deployed controversial tactics designed specifically to externalize the cost and risk of their business and mask bad behavior from regulators and public watchdogs. French economist Dr. Guillaume Vuillemey provides a data driven and highly compelling analysis of these tactics in

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[26] *Id*. at 622-28.
[27] Costanzo, Exh. CPC-1T at 39:11-40:3.

his 2020 paper published by the Center for Economic Policy and Research titled *Evading Corporate Responsibilities: Evidence from the Shipping Industry*.[28]

25. In *Evading Corporate Responsibilities,* Dr. Vuillemey addresses three tactics that are common within the foreign shipping industry: the use of single-vessel shell companies to shield ships' beneficial owners from environmental liability, reliance on open registries commonly known as "flags of convenience" to evade regulation and corporate responsibility for environmental risk and mariner safety, and "last-voyage flags" that mask unsafe ship-breaking practices at the end of a vessel's useful life.

26. As to the industry's use of single-vessel entities to fragment assets, Dr. Vuillemey explains that:

> These [shipping] firms have increasingly dissociated legal and ultimate ownership, using parent-subsidiary structures, while minimizing the amount of assets in each subsidiary. Beyond global trends, microeconomic tests confirm that liability evasion is a dominant force behind these facts.[29]

27. As Kathy Metcalf, president and CEO of the Chamber of Shipping of America, acknowledged at hearing, there is a component of the world's fleet of foreign flag ships that would attempt to evade its legal responsibilities by abandoning a vessel owned in a shell corporation in the event of a major oil spill or other maritime casualty. Ms. Metcalf not only acknowledged this possibility, but agreed that, while 100% of the foreign flag ships navigating Puget Sound must be under the direction of a pilot, only 14% or fewer of those vessels will actually be subject to a Port State Control inspection by the Coast Guard in Puget Sound.[30]

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[28] Exh. CPC-17.
[29] *Id.* at 11.
[30] Tr. at 524:10-14

28. Further, Ms. Metcalf had no disagreement with the testimony of marine insurance broker Sean McCarthy that the owner of a ship in a single shell corporation that suffers a major casualty has the option to, as the saying goes, "just take a razor blade, scrape the name of the company off the window, and off they go."[31] This is because no P&I Club insurance policy is required to cover the losses in a ship abandonment situation because the insurance companies covering oceangoing carriers operate "on a pay-to-be-paid basis in a pure indemnity system, where the individual member – the individual ship owner must first pay the loss and then be reimbursed" by the P&I Club.[32] Where Washington law specifically exempts P&I Club members representing the overwhelming majority of commercial vessel owners and operators from a bonded Certificate of Financial Responsibility,[33] the full risk of vessel abandonment and liability evasion falls squarely on the State of Washington.

29. Ms. Metcalf also agreed that Puget Sound is exposed to risks from what she characterized as the shipping industry's "lower performers."[34] This category includes the foreign flag ship that nearly ran aground at the mouth of the Columbia River in 2021 as a result of engine failure, was ordered by the Coast Guard to steam south to San Francisco for repairs and then, after departing, turned off its AIS position transmitter and ignored the Coast Guard order.[35] According to Ms. Metcalf, there was no question that turning off its AIS "was the wrong thing for that ship to have done."[36]

30. When asked whether her organization would support action by the Washington legislature to eliminate the exemption from enhanced financial responsibility requirements enacted in 2022

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[31] Tr. at 422:12-14.
[32] *Id*. at 421:16-19.
[33] RCW 88.40.020(2)(c)(3)(b).
[34] *Id*. at 521:8-12.
[35] Jordan Exh. DJ-1T at 20:11-21:18.
[36] Tr. at 531:22-23.

for foreign flag ships based upon the level of their indemnity insurance from a P&I Club and require instead a certificate of financial responsibility backed by a surety bond, Ms. Metcalf noted that the Chamber of Shipping of America currently has no position on the issue, but that "our members would support anything that would ensure responsible parties are held to pay for the damages that they've caused."[37] It should be noted that the Columbia River Steamship Operators Association, which shares multiple members with Ms. Metcalf's organization, opposed the 2022 Washington legislation that raised financial responsibility limits for vessels.[38]

31. Critically, the lack of corporate responsibility that pervades the shipping industry regularly manifests in callous disregard of pilots' safety. Far too often, shippers put pilots' lives at risk by deploying pilot transfer arrangements that do not comply with international requirements and are extraordinarily dangerous. Captain Sandy Bendixen, an international leader and advocate for improving pilot transfer safety, discusses in her testimony the myriad ways in which PSP's customers fail to provide transfer arrangements that protect pilots.[39] Captain Bendixen concisely states the prevailing view among Puget Sound Pilots regarding the danger created by the negligence of a significant segment of ships calling Puget Sound:

> As Puget Sound Pilots, putting our lives on the line to protect people and the Puget Sound environment is part of our job. We understand and accept the risks that are inherent in our work. But those risks should not be compounded by unsafe and illegal pilot transfer arrangements. I am proud of the work that I and my fellow pilots both in PSP and with pilot organizations around the world are doing to prevent and address these problems when they are identified.[40]

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[37] *Id*. at 536:11-14.
[38] Exh. MM-92X at 9.
[39] Bendixen, Exh. SB-1T at 9-29.
[40] *Id.* at 29:19-23.

32. Pilots put their lives on the line on behalf of the citizens of Washington State. They do so under extraordinarily challenging conditions that too often are made worse by shippers who prioritize profit to the exclusion of appropriate concern for their safety and the environment that pilots are charged to protect. There is no question that the PMSA's opposition to appropriately funding a first-rate pilotage system is nothing more than another example in a long list of practices designed to externalize their cost and risk of doing business.

C. The Standard for Decision: The Puget Sound Pilotage District Should be Funded to Achieve "Best Achievable Protection."

33. The protection of Washington's ecology and natural resources through the prevention of oil spills is a bedrock principle of Washington law and policy in a state that for decades has assumed a national leadership role on this critically important subject. As the Legislature explained in Washington's nation-leading Oil and Hazardous Substance Spill Prevention and Response Act ("OSPRA"):

> Washington's navigable waters are treasured environmental and economic resources that the state cannot afford to place at undue risk from an oil spill.[41]

Therefore:

> The state has a fundamental responsibility, as the trustee of the state's natural resources and the protector of public health and the environment to prevent the spill of oil.[42]

34. The Legislature has also rightly found that when it comes to oil spills, prevention is far more cost effective than cleanup:

> The legislature finds that prevention is the best method to protect the unique and special marine environments in this state. The technology for containing and cleaning up a spill of oil or hazardous substances is at best only partially effective. Preventing spills is more protective of the environment and more cost-effective when all the response and damage costs associated with

[41] RCW 90.56.005.
[42] *Id*.

> responding to a spill are considered. Therefore, the legislature finds that the primary objective of the state is to achieve a zero spills strategy to prevent any oil or hazardous substances from entering waters of the state.[43]

35. Nowhere is the superior cost-effectiveness of spill prevention to cleanup more obvious than in the decision to fund a best-in-class pilotage system. Puget Sound Pilots are directly responsible for the transport of enormous quantities of oil (both as cargo and bunker fuel) transiting Washington's most ecologically sensitive waterways and are the state's front line of defense against the ecological catastrophe that would result from a significant spill. In 2006, the Department of Ecology estimated that a significant oil spill could cost approximately $10.8 billion, while adversely affecting about 165,000 jobs.[44] Adjusting the Department of Ecology's estimate for inflation, the cost of a single significant oil spill could easily exceed the cost to fund PSP's proposed tariff for more than 300 years.[45]

36. The legal standard that Washington applies to laws intended to prevent oil spills is "best achievable protection," which is defined as follows:

> "Best achievable protection" means the highest level of protection that can be achieved through the use of the best achievable technology and those staffing levels, training procedures, and operational methods that provide the greatest degree of protection achievable. The director's determination of best achievable protection shall be guided by the critical need to protect the state's natural resources and waters, while considering: (a) The additional protection provided by the measures; (b) The technological achievability of the measures; and (c) The cost of the measures.[46]

37. In Order 06 in this case, the Commission declared that the statutory standard in RCW 81.116.020 (3) requiring "fair, just, reasonable and sufficient" rates for pilotage services necessarily "involves an exercise of judgment in light of the specific facts of each case" and

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[43] *Id*. (emphasis added).
[44] *Oil Spill Prevention in Washington*, Dept. of Ecology, https://ecology.wa.gov/Spills-Cleanup/Spills/Oil-spill-prevention.
[45] Costanzo, CPC-1T at 31:11-13.
[46] RCW 88.46.010(1).

that this ratesetting standard in a pilotage general rate case must be applied in light of other statutes "such as RCW 88.16.005, which emphasize the importance of pilotage and the protection of the natural environment."[47]

38. While the clear statutory mandate of RCW 88.16.005 that the fundamental purpose of the compulsory pilotage system in Washington is "to prevent the loss of human lives, loss of property and vessels, and to protect the marine environment" may not expressly require adoption of the "best achievable protection" standard, it certainly mandates the funding of the pilot system to a level that is required to ensure consistency with Washington's zero spill's mandate. This necessarily includes establishing pilot DNI at a nationally competitive level sufficient to attract the best candidates to the BPC-administered pilot training programs and, ultimately, to retain those individuals as Puget Sound Pilots. Put another way, the "fair, just, reasonable and sufficient" ratesetting standard in the pilotage context should be construed to embrace maximizing the accident-prevention capability of the compulsory pilot system, whether or not the Commission decides to formally apply the "best achievable protection" standard.

III. THERE ARE NO ECONOMIC IMPEDIMENTS TO FULL FUNDING OF A WORLD-CLASS PILOTAGE SYSTEM IN PUGET SOUND.

A. PSP's Proposed Tariff Presents No Risk of Rate Shock.

39. In a service utility rate case involving rates for residential, commercial and industrial customers of electricity or natural gas, the Commission must determine whether a proposed rate increase is fully justified on a "cost causation" basis. In cases involving a substantial proposed increase in utility rates, a related consideration is potential "rate shock," which may cause the Commission to order a phased implementation of the utility's legitimate cost-based

[47] Order 06 ¶ 21.

rate increase where there is "the need of an affected class of customers to bear required increases gradually."[48]

40. In this pilotage rate case, the evidence demonstrates that the approximately 40% rate increase requested by PSP presents no issues of rate shock for three reasons. First, the large ocean-going vessels that make up over 99% of PSP's pilotage assignments do not constitute a class of ratepayers for whom even a doubling of pilotage rates in Puget Sound would present any sort of hardship. Second, the comparison of PSP's proposed pilotage rates to those in other West Coast ports shows that the increased rates in Puget Sound will remain generally below those in all other West Coast ports for most vessel types. Third, the only potential inequity in the rate design from Order 09 was the nearly doubling of rates for foreign yachts, which is addressed in this case by lowering those rates to approximately 60% of the rates established for year two in Order 09.[49] In 2021, foreign yachts generated $126,326 in total revenue, just 0.00395% of PSP's total revenue in that year.[50]

41. From a shipping economics standpoint, the bottom line is clear. Shipping economist Ken Eriksen's opinion that pilotage rates are an absolutely insignificant factor in determining where ships call places the Commission in a position where there should be no hesitation in approving a revenue requirement for PSP that funds Washington's premier pilot group to a best-in-class level because the impact on the vessels paying pilotage rates in exchange for the required safety-focused services of a maritime pilot is economically insignificant. There is no reason to consider phasing a rate increase over a period of years. The contention of the Cruise Lines International Association that "PSP's filing reflects a substantial and onerous increase in

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[48] *Washington Utilities and Transp. Comm'n v. Washington Natural Gas Co*., Docket UG 940034, 5th Suppl. Order at 17 (April 11, 1995).
[49] Costanzo, Exh. CPC-T at 51:17-21.
[50] *Id*. at 52:5-7.

pilotage rates for cruise lines in the Puget Sound" is simply not true.[51] In fact, the Commission in Order 09 adopted PSP's proposed rate design, which reduced the tonnage charges for large vessels over 50,000 gross tons by 27%.[52] In the event the new rates proposed by PSP are adopted, cruise vessels will see their pilotage fees increase to just over 10% above the rates that prevailed in 2019 and 2020.

B. West Coast Shipping Volume Data and PSP Assignments by Vessel Type.

42. Puget Sound ranks second in both export and import volume among the major port clusters on the West Coast. Moving north to south, these include Puget Sound (ports of Seattle and Tacoma), the Columbia River (multiple ports on the Columbia River from Astoria to Portland/Vancouver), San Francisco Bay (ports of San Francisco and Oakland) and LA/Long Beach (ports of Los Angeles and Long Beach). For the five-year period of 2016-21, two charts prepared by Mr. Eriksen display export and import volume by port cluster in tons.[53] A second set of charts displays the remarkable diversity of PSP assignments by vessel type and gross tonnage during the five-year period of 2016-21.[54]

43. In each year, container vessels accounted for the largest share of vessel traffic, followed closely by oil tankers. Bulk carriers, car carriers and cruise ships followed in that order except for the Covid-impacted years of 2020 and 2021 when cruise ship volume declined significantly.

[51] Cruise Lines International Association letter dated March 30, 2023 at 1.
[52] Order 09 ¶ 333.
[53] Appendix at 1, Eriksen, Exh. KAE-1T at 3-4.
[54] Appendix at 2, Ericksen, Exh. KAE-1T at 5.

C. <u>Ship Traffic Volatility in Puget Sound</u>.

44. Mr. Eriksen concludes that ship traffic in Puget Sound is "quite volatile for multiple reasons,"[55] that "continued volatility is likely" and that it is not realistic to predict annual vessel traffic in Puget Sound "with any degree of certainty."[56] In support of these conclusions, Mr. Eriksen assembles and analyzes datasets that track global financial stress factors such as debt crises, trade wars, pandemics, variation in manufacturing supplier delivery times and 10-or-more years of export volumes through Puget Sound showing significant volatility in various markets including agricultural products, fishery, wood products and bulk fuel shipments.[57]

D. <u>Substantial Continuing Growth in Container Vessel Size</u>.

45. Container vessels, the single largest component of piloted Puget Sound traffic, experienced a fivefold increase in ship size from the 1990s to 2019, increasing from 5,000 TEUs to nearly 25,000 TEUs. Two charts depict the generational growth of container vessels over the last 60 years and the equivalent (end to end) distance of the container capacity by vessel size.[58]

46. This growth in the size of what are now called ultra-large container vessels will only continue as shown in Mr. Eriksen's data documenting both vessel deadweight tonnage size growth and booked ship builds,[59] which is consistent with the recent inquiry from a major container carrier to PSP regarding the proposed arrival of a 23,000 TEU container ship later this spring, the largest ever to call Puget Sound.[60]

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[55] Eriksen, Exh. KAE-1T at 6.
[56] *Id*. at 16:24.
[57] *Id*. at 6-15.
[58] Appendix at 3; Eriksen, Exh. KAE-1T at 23 and 24.
[59] Ericksen, Exh. KAE-1T at 27-31.
[60] Exh. MM-111X.

E. Comparison of PSP's Proposed Pilotage Rates to Other West Coast Ports.

47. If the Commission adopts PSP's proposed 40% increase in pilotage rates, which will add approximately $14 million to the existing $36 million revenue requirement for a total of $50 million, PSP's proposed rates will still fall generally below those charged to vessels calling in the major ports in British Columbia, the Columbia River, San Francisco Bay and LA/Long Beach. A series of charts in the Appendix[61] displays the pilotage fee comparisons for large and medium container vessels, a five-hold dry bulk vessel, large and small tanker vessels and a large cruise ship. Each of these charts compares current charges for the same vessel in other West Coast ports to the rates proposed by PSP in this case.

F. Pilotage Costs Are "Infinitesimally Small" Compared to Ship Revenue.

48. In Mr. Eriksen's opinion, the cost of PSP's proposed pilotage charges to vessels of all types is "infinitesimally small in comparison to the overall revenue (ocean freight rates per unit carried times volume carried)."[62] Two charts in the Appendix, which display pilotage costs by unit of measure (TEU, ton, barrel, passenger) carried by ship type demonstrate the strength of Mr. Erikson's conclusion.[63]

49. These charts generate a number of important observations. First, the economies of scale with ever larger container ships reduces pilotage costs on a per unit basis by nearly two-thirds from $1.80 per container to just over $0.60 per container. For the larger seven-hold dry bulk carriers of grain and other products, the cost per metric ton is less than $0.12, the cost per barrel of oil for either a larger or small tanker is less than two cents and the cost for a large

[61] Appendix at 4-6; Ericksen, Exh. KAE-4T at 2-6.
[62] Exh. KAE-6X at 35.
[63] Appendix at 7; Exh. KAE-4T at 11.

cruise ship is just $5.00 per passenger. Second, from the standpoint of basic shipping economics, it is impossible to characterize costs of this small magnitude as impacting the competitiveness of Puget Sound ports. For cruise lines, for example, large numbers of cruise ships call Puget Sound because of the attractiveness of this location as a destination in itself in combination with Puget Sound serving as the gateway to the Alaskan cruise season.

IV. THE TARIFF FUNDING PSP SHOULD INCLUDE NATIONALLY COMPETITIVE PAY AND BENEFITS

50. From an economics standpoint, the single largest component of every pilotage tariff in the United States is pilot net income. The aggregate distributable net income or DNI approved in Order 09 for 50 pilots in year one totaled $20,042,750 for 55.8% of the tariff revenue requirement. PSP's request for a DNI of $574,087, which matches the national median of the 12 pilot groups (other than PSP) for which public information is available, for 56 pilots accounts for 64.3% of the $50.5 million in PSP's updated pro forma revenue requirement. Before delving into the details of the more than 650 pages of comparable income data relied on by PSP compensation expert David Lough, four introductory points should be made.

51. First, both the PMSA and UTC Staff have taken positions on this issue that are unreasonable on their face and should be given no weight: (1) the PMSA because it urges a 15% cut in the previously approved year two DNI of $410,075 in Order 09; and (2) UTC Staff because it performed no analysis of the voluminous comparable income information in the record and simply defaulted to a suggested continuation of the current $410,075 DNI. Conversely, the record assembled by PSP includes all of the publicly available pilot income data (rate order, audit or financial disclosure) issued in the last five years for 13 pilot groups including PSP, who collectively account for 46% of the licensed maritime pilots in the U.S., a clearly representative sample. This dataset provides the Commission with the evidence and decision-

making space to determine the level of DNI appropriate to establishing PSP as a world-class pilot group with the capability of attracting and retaining a diverse group of elite trainees and existing licensees.

52. Second, while PSP presents compelling evidence that it is one of the hardest working pilot groups in the country, the Commission should seriously consider finding as a matter of law that any major state-licensed pilot group of 15 or more pilots whose regulator establishes the authorized number of licensees should be presumed comparable in terms of workload to other state-licensed pilot groups regulated by a pilot board or commission like Washington's BPC. These state agencies are experts in the pilotage grounds each regulates, periodically determine the authorized number of pilots necessary to serve the prevailing traffic level and are responsible for adopting work/rest rules appropriate to the unpredictable workload of pilots working a standard maritime industry schedule of equal amounts of time on/time off.

53. Third, the Commission should develop an income parity principle to ensure that there is compensation equity between the pilot grounds in Washington for which UTC establishes the rates, specifically the Grays Harbor pilotage district and the Puget Sound pilotage district. As explained further below, the principle of in-state pilot ground compensation parity has been adopted by both Oregon and Louisiana. It should receive serious consideration in this case.

54. Fourth, both the public commentary from five educators and the testimony from no less than seven PSP witnesses demonstrates that PSP has devoted several years to date to what is currently a nation-leading effort to diversify its pilot corps with more pilot trainees who are female or members of underrepresented groups. If PSP's and BPC's DEI efforts are to be successful, it is critical for the Commission to approve both a nationally competitive level of pay and benefits for PSP and a comprehensive suite of automatic tariff adjustment

mechanisms that will stabilize rates, reduce the need for time-consuming and expensive general rate cases and establish conditions that foster a more cooperative relationship between PSP and the shipping industry.

55. With these preliminary points in mind, the balance of this section addresses in turn the comparability of the Puget Sound pilotage ground to others on the West Coast, the substantial danger to which all pilots are exposed in their work, analysis of the publicly available levels of pilot compensation and benefits throughout the U.S. and the importance of nationally competitive pay and benefits to PSP's ongoing efforts to diversify its pilot corps.

A. The Comparability of the Puget Sound Pilots to Other U.S. Pilot Groups.

56. When it comes to assessing the comparability of the Puget Sound pilotage district to other pilotage grounds or districts throughout the United States, the place to start is an examination of the qualifications one needs to become a maritime pilot in the U.S. When asked whether the highly experienced mariners who compete for pilotage positions in the 24 U.S. states with pilotage statutes are comparable in terms of their maritime background and experience, maritime safety expert and former LA Harbor pilot Captain Mitchell Stoller gave the following answer:

> Generally, that is true. To be successful in applying to become a trainee for a pilotage position, a mariner must meet the licensure requirements of the particular state or pilotage ground and have considerable ship handling experience. Where that particular experience is obtained is highly variable. Depending upon the pilotage ground, successful applicants will come from multiple segments of the maritime industry. These include the towboat industry, public ferry systems, Navy ship officers, large commercial vessels including oil tankers, bulk carriers, container ships, car ships, dredges, factory fish processors and others. Throughout the US, highly experienced and skilled mariners from any one of these different components of the US maritime transportation industry have been selected as pilot trainees, successfully completed that training and been issued a state pilot's license.[64]

[64] Stoller, Exh. MSS-1T at 3:4-14.

57. The second key factor in assessing the comparability of the Puget Sound pilotage district to other pilotage grounds is the nature of the grounds including pilot training requirements, traffic level, traffic mix and range of the conditions encountered on pilotage district waterways. In this case, PSP has assembled considerable evidence comparing its pilotage ground to others on the West Coast, including the two grounds on the Columbia River, the San Francisco Bay and Sacramento River pilotage grounds and the high volume container-dominant pilotage grounds of Los Angeles Harbor and Long Beach. Examination of these West Coast grounds shows that Puget Sound's traffic is the most diverse, covers the largest geographic area and involves every category of assignment type that can be found on the West Coast.

58. In his testimony, PSP Vice President Eric Klapperich describes the high level of skill and experience required of potential PSP trainees, the most common career paths to becoming a Puget Sound pilot and the extensive and difficult character of the 18-month training process. Captain Klapperich also describes in detail three examples of challenging pilotage assignments that, through the use of charts and video links, give the reader an opportunity to explore how extraordinarily difficult the job of a pilot in Puget Sound really is.[65]

59. These examples include directing a container ship that is four football fields long through the Port of Seattle's West Waterway in extremely tight quarters where the pilot must choreograph the use of assist tugs to keep the vessel within the dredged channel, away from shore cranes and moved into a crowded berth space at the dock. The second example involves the undocking of an oil tanker at Cherry Point in adverse weather. In winter conditions, the wind and current forces at this terminal can change unpredictably and require extraordinary skill on

[65] Klapperich, Exh. ECK-1T at 35-46.

the part of the pilot in deciding how best to deploy the ship's engine and rudder in combination with multiple assist tugs in order to avoid an oil spill-producing casualty. The third example describes the transit of a bulk cargo carrier through the Port of Seattle's West Waterway and up the Duwamish River. To discharge a cargo of cement at one of two facilities some two miles up the river, these ships must be navigated backwards or stern first through powerful river currents. At the same time, the pilot must negotiate around shore cranes, a 150-foot wide railroad bridge and gillnets deployed by Tribal fishers.

60. Compared to the Columbia River, San Francisco Bay and LA/Long Beach, PSP has the most diverse traffic mix with significant volume in every category except naval vessels. In order, the top-ranking PSP traffic categories by vessel class are container, oil tanker, bulk carrier, car carrier, cruise, roll-on/roll-off ("ro/ro") and general cargo. By comparison, Columbia River ports see predominantly bulk carrier traffic with some car carrier and tanker traffic, but very low volumes of container vessels, and virtually no cruise or ro/ro. In San Francisco, cruise ship volume is quite low. And in LA/Long Beach, container ship traffic makes up over 90% of the vessel calls with modest representation in the other cargo categories and virtually no cruise volume.

61. The Columbia River Bar pilotage grounds is described by Captain Dan Jordan,[66] the Columbia River pilotage grounds by Captain Jeremy Nielsen,[67] the San Francisco Bar pilotage ground by Captain Anne McIntyre [68] and the LA Harbor pilotage grounds by Captain Mitchell Stoller.[69] A review of their testimony and that of PSP's Captain Eric Klapperich leads to a pair of conclusions. First, the work of a maritime pilot on any one of these grounds requires a

[66] Jordan, Exh. DJ-1T at 4-11.
[67] Nielsen, Exh. JN-1T at 2-8.
[68] McIntyre, Exh. ALM-1T at 3:1-7.
[69] Stoller, Exh. MSS-1T at 23-27.

unique skill set that is obtained only after 12 to 20 or more years of experience in challenging maritime navigation settings and then honed through an extensive training process to develop the local knowledge necessary to serve as a licensed pilot on a particular pilotage ground. Second, the Puget Sound pilotage district, like others on the West Coast, has its own unique set of pilotage challenges, not the least of which is the extraordinary diversity of vessel types and waterways.

62. In addition to being comparable to all other major U.S. pilot groups subject to government determination of the authorized number of licensees and their target net income, a comparison of PSP workload data to that of 15 other U.S. pilot groups shows that PSP's workload is among the highest in terms of total work hours.[70] This dataset shows the total time on task for each pilot group based upon the average number of annual assignments and the average time on task required to perform those assignments. For 2022, this data shows that PSP pilots posted an average of 1486 hours per pilot engaged in the universally recognized components of a pilotage assignment, which are preparation time, travel time and bridge time.[71]

63. It is also worth emphasizing that, in response to the Commission's directive in Order 09 that PSP improve its dispatch efficiencies, no less than seven significant measures described by Captain Carlson were implemented in the second half of 2021 and first quarter of 2022. The statistics for the pre-Covid and post-Covid years of 2019 and 2022, which saw comparable levels of vessel traffic, show that these efficiency measures improved PSP's on-watch efficiency by 5.4%.[72] In 2022, callbacks performed by off-duty pilots continued at an

[70] Appendix at 8; Carlson, Exh. IC-8T at 15.
[71] Exh. IC-13, 2022 tab.
[72] Appendix at 9; Exh. IC-8T at 13.

excessive rate of 16.76% of total assignments, but this was a 15% improvement over 2019 when the callback percentage was 19.73%.[73]

64. The record in this case flatly contradicts PMSA's relentless efforts to characterize PSP as lazy and inefficient, which has been one of Captain Moore's talking points on his monthly report to the BPC for over a year.[74] When the average of all PSP pilot time on task is tabulated, which includes 177.6 days on watch, three days of Peak Period Work, plus nine days devoted while off-watch to meetings, training and callback jobs, the average PSP pilot is working 190 days annually, a level significantly in excess of equal amounts of time on/time off. In addition, the hard-working character of the PSP pilot corps is demonstrated by the excessive level of callback jobs worked by PSP pilots compared to other West Coast groups with their levels all below 5%.[75] These include the BC Coast Pilots, Columbia River Bar Pilots, Columbia River Pilots and San Francisco Bar Pilots. The PMSA position that PSP is not comparable to other U.S. state-licensed pilot groups is simply wrong and finds no support in the record.

B. <u>All Pilots Are Exposed to Substantial Danger and Legal Risks</u>.

65. Pilots fulfill their mission to protect life, property and the Puget Sound environment at enormous personal risk. Clayton Diamond is a retired Coast Guard Commander and Judge Advocate General who currently serves as the Executive Director and General Counsel for the American Pilots' Association, which is a non-profit organization that has been the national association of the piloting profession since 1884. Mr. Diamond describes the physical dangers that pilots face in his testimony:

> A career as a pilot is not just challenging and inconvenient, it can also be dangerous. Many who are not in and around the profession on a regular basis

[73] *Id*.
[74] Exh. IC-11 at 23-33.
[75] Exh. IC-6 at 1 (PSP,Columbia River Bar Pilots and Columbia River Pilots); Exh. IC-16 at 15 (BC Coast Pilots); McIntyre, Exh. ALM1T at 3:9-20 (San Francisco Bar Pilots).

> don't always appreciate the serious physical risks associated with piloting. In the United States eight pilots and a ninth person – a pilot boat operator – have died during pilotage operations in the past sixteen years. Pilots are also killed in the line of duty with alarming regularity all over around the world. While those of us in positions of responsibility in the piloting community, and those – like this commission, with a degree of regulatory oversight – must do everything we possibly can to ensure the best equipment and safety precautions are in place, the simple fact is piloting is a dangerous profession.[76]

The primary physical risk to pilots is the pilot transfer, which occurs at sea, often in bad weather, via a pilot ladder affixed to the ship's side. As Captain Bendixen explains in her testimony, the physical risks that pilots face in the line of duty are made worse by their customers, who regularly fail to provide adequate pilot transfer arrangements that comply with international requirements.

66. In addition to risking life and limb, every pilot is acutely aware that a single mistake could mean financial ruin and an abrupt end to a career that he or she has committed well over a decade to pursue. As Mr. Diamond explains:

> [T]he movement of large vessels carrying valuable or hazardous cargo within narrow and restricted waterways carries with it serious risk of accident and the potential for substantial damages, including the loss of the lives, damage or loss of cargo, and serious harm to the marine environment. The financial costs of such consequences can be tens of millions if not hundreds of millions of dollars and far exceeds the assets of a typical pilot.[77]

Although there has traditionally been an "unspoken" reluctance of injured parties to look to pilots for financial recourse, the fact remains that "[i]t is well settled that 'a pilot may be held liable to third parties for damages caused by his negligence' and 'may be held liable for damages to the vessel he was piloting,' and sufficient liability insurance . . . is either not

[76] Diamond, CLD-1T at 11:5-14.
[77] *Id.* at 21:17-23.

available at any price or available only at a price that is prohibitive in relation to the fee earned for a pilotage job."[78]

67. The immense personal risk (physical and financial) inherent in piloting is one of many factors that distinguishes pilots from other mariners both in terms of their appropriate level of compensation and their elite status within the maritime profession. The growing character of these risks is reflected in the substantial increases in PSP's multiple insurance coverages of the last few years.[79]

C. Pilot Compensation and Benefits Throughout the U.S.

68. When it comes to evaluating PSP's compensation and benefits, the place to start is the table[80] below assembling the publicly available data regarding pilot income, medical insurance benefits and pension benefits for 13 pilot groups (including PSP) across the United States who represent 46% of U.S. pilots.[81]

PILOT GROUP INCOME & BENEFITS									
	PILOT GROUP	NO. OF PILOTS	DATE OF AUDIT/ORDER	NET INCOME	PROJ. NET INCOME 1/2023	MED. INS. IN TARIFF	PENSION ACCRUAL %	PENSION FUNDING	COLA
1	Crescent River Port Pilots	118	2021	$586,019	$621,693	Yes	2%	Farebox	Yes, LPFC 2021 Order
2	Port Everglades Pilots	18	2019	$549,998	$607,095	Yes	2.5% (50% Cap)	Farebox	Yes, 2.5% thru 2024
3	New Orleans-Baton Rouge Pilots (NOBRA)	119	2021	$565,518	$594,127	Yes	2% (50% Cap)	Farebox	Yes, per LPFC Order
4	Lake Charles Pilots	17	2020	$533,436	$550,000	Yes	Individual Pilots	Individual Pilots	Yes, per LPFC Order
5	Associated Branch Pilots	49	2021	$521,232	$547,619	Yes	2% (50% Cap)	Farebox	Yes, per LPFC Order
6	Columbia River Bar Pilots	16	2021	$445,555	$503,527	Yes	1.25%	Tariff	Yes, Western CPI
7	Columbia River Pilots	41	2021	$445,555	$503,527	Yes	1.25%	Tariff	Yes, Western CPI
8	Grays Harbor Pilots	2	2022	$487,259	$497,759	Yes	Washington PERS	Public Funding	Yes, Contract (3%-5%)

[78] *Id*. at 21:23-22:3.
[79] Exh. MM-81X.
[80] Exh. DL-25T at 4. Line 11 on this table aggregates the three Great Lakes Pilot groups regulated by the U.S. Coast Guard.
[81] The 13 pilot groups in this table account for 562 pilots, which represents 46.8% of all maritime pilots in the U.S. on the American Pilot Association's list of U.S. pilot groups, Exh. CLP-3.

9	LA Harbor Pilots	16	2019	$434,712	$456,719	Yes	City of LA PERS	Public Funding	No
10	San Francisco Bar Pilots	51	2018 2019 2020 2021	$520,250 $499,415 $428,539 $328,154	$443,923 (Average)	No	1.84%	Farebox	No
11	Great Lakes Pilots	49	2022	$412,841	$422,336	No	Individual Pilots	Pilot Group	Yes, 5.0% CPI (Fed Reserve)
12	Puget Sound Pilots	52	2021 DNI 2021 Actual	$400,855 $295,616	Unknown	No	1.50%	Farebox	2.3% in 2022
13	St. Johns Bar Pilots	14	2020	$564,000	$607,366	Yes	1.75-2.0% (50% cap)	Farebox	2.5%

69. PSP's compensation expert David Lough, who has over 40 years' experience as an executive and management level compensation consultant including 23 years with two of the largest compensation consulting firms in the world, uses the 2023 projected net income figures from the above table to analyze the pay differentials between the Seattle/Tacoma Puget Sound region and the locations of the other pilot groups listed in the table. Using Salary.com, which is the "most widely used and most highly regarded compensation survey aggregator,"[82] the above 2023 net income amounts are re-expressed to incorporate the pay differential by location compared to Seattle/Tacoma in percentage terms as shown below:[83]

PAY DIFFERENTIALS FROM LOCATION TO SEATTLE

	Pilot Group	Office Location		Differential (source: Salary.com)
1	St. Johns Bar Pilots	Atlantic Beach	FL	16.3%
2	Crescent River Port Pilots' Association	Metairie	LA	10.5%
3	Port Everglades Pilots' Association	Ft. Lauderdale	FL	12.3%
4	Lake Charles Pilots	Lake Charles	LA	20.7%
5	New Orleans Baton Rouge Steamship Pilots Association (NOBRA)	Metairie	LA	10.5%
6	Associated Branch Pilots/BAR	Metairie	LA	10.5%
7	Pilotage Division of the Port of Grays Harbor	Aberdeen	WA	9.1%
8	Columbia River Pilots	Astoria	OR	6.3%
9	Columbia River Bar Pilots	Portland	OR	5.3%
10	Great Lakes Pilots Associations	Port Huron	MI	8.4%
11	Los Angeles Pilot Service	Los Angeles	CA	-3.3%
12	San Francisco Bar Pilots	San Francisco	CA	-12.5%

[82] Lough, Exh. DL-1T at 17:7-8.
[83] Exh. DL-25T at 5.

Mr. Lough then uses the pay differential data to show a location-based adjustment tied to pay differential by pilot group and generates the median level of pilot income for 2023 for the 12 pilot groups other than the Puget Sound Pilots. This is displayed in the table below:

LOCATION ADJUSTED 2023 NET INCOME[84]

	Pilot Group	Projected 2023 Net Income	Location Adjustment to Seattle Metro	Adjusted Projected 2023 Net Income
1	St. Johns Bar Pilots	607,366	16.3%	706,367
2	Crescent River Port Pilots' Association	621,693	10.5%	686,971
3	Port Everglades Pilots' Association	607,095	12.3%	681,768
4	Lake Charles Pilots	550,000	20.7%	663,850
5	New Orleans Baton Rouge Steamship Pilots Association (NOBRA)	594,127	10.5%	656,510
6	Associated Branch Pilots/BAR	547,619	10.5%	605,119
7	Pilotage Division of the Port of Grays Harbor	497,759	9.1%	543,055
8	Columbia River Pilots	503,527	6.3%	535,249
9	Columbia River Bar Pilots	503,527	5.3%	530,214
10	Great Lakes Pilots Associations	422,336	8.4%	457,812
11	Los Angeles Pilot Service	456,719	-3.3%	441,647
12	San Francisco Bar Pilots	443,923	-12.5%	388,433
	50th Percentile (Median)	525,573	9.2%	**574,087**

As explained by Mr. Lough, the compensation profession "has generally adopted use of the median as best practice when representing the middle of a compensation market for a particular job."[85] Using this methodology, the median income for these 12 pilot groups in 2023 is $574,087. Mr. Lough's opinion regarding the level of net income or DNI that is necessary for PSP to be competitive nationally in attracting a fair share of the best pilot trainee candidates in the United States is clear and succinct:

> Failure to match DNI to competitively-aligned net income will, in my opinion, create undue and undesirable risk to PSP's ability to attract a share of the best pilot trainee candidates in the U.S. and achieve the workforce diversity needed for success. This is especially so considering the significant cost-of-living difference between PSP and the pilot groups in the Midwest and U.S. South where the cost of living is significantly lower than that of the Seattle/Tacoma area. As described earlier, this situation drives significant observed positive pay differentials across between the Puget Sound region and most other areas of the country. To establish pay rates that are competitively aligned and follow both common and best practices, pay rates for PSP pilots should be

[84] Exh. DL-25T at 6.
[85] Exh. DL-1T at 19:18-20.

established with full consideration of the Seattle area's geographic pay differentials from where comparable pilot groups are located.[86]

70. The rate orders in the record from the Oregon Board of Maritime Pilots[87] and the Louisiana Pilotage Fee Commission[88] are instructive on the parity issue. Despite the major difference between the types of pilotage grounds on the Columbia River – the short run but often treacherous transit across the Columbia River Bar compared to the lengthy river transit to the Columbia River's major ports within a confined channel – the OBMP has concluded that parity of income between these two pilotage grounds, no doubt influenced by the comparable fundamental skills, elite training and levels of work by both pilot groups, requires that pilot pay and benefits for both groups should be in parity or highly comparable. In Louisiana, the LPFC, in reliance upon an important Louisiana Supreme Court decision, has adopted the parity principle for pilot group compensation, but also takes into account relevant workload differences between its pilot groups. In its December 2021 rate order, the LPFC approved a target net income level of $586,019 for the Crescent River Port Pilots Association, which reflected a 22.67% increase in the test year target compensation for the New Orleans-Baton Rouge Pilots (NOBRA) of $467,966 to account for the 22.67% greater level of assignments per pilot between the two groups.[89]

71. The Commission should follow the lead of pilot commissions in Oregon and Louisiana, which have adopted a policy of income parity between pilot groups in their jurisdictions. In his testimony, Captain Moore admitted that, within the Grays Harbor pilotage district, "they do not have enough work for two pilots."[90] Nonetheless, the PMSA supported a 15% increase in

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[86] Lough, Exh. DL-1 at 20.
[87] Exh. MM-89X; Exh. DL-14, 15, 16.
[88] Exh. DL-7.
[89] *Id*. at 36.
[90] Tr. at 590:3-4.

the Grays Harbor pilotage tariff in 2020.[91] On the issue of income parity between groups within the same state, Captain Moore reverts to his pervasive emphasis on the existence of "many factors," and refused to acknowledge that income parity is a policy that the Commission should consider in this case.

72. While the Grays Harbor Pilots are a small pilot group with fluctuating but relatively low traffic levels compared to Puget Sound on a per pilot basis, which makes a workload comparison to PSP impractical, the income parity principle is still one that should be considered by the Commission on the basis of fundamental fairness. How does it make sense within the State of Washington for the Grays Harbor Pilots working fewer assignments annually to make a projected income of $497,759 in 2023 when PSP's currently authorized DNI is $410,075 and actual income in 2022 was $335,000? At a minimum, the Commission should address the obvious pay equity issues involved as well as the cost-of-living differentials between Grays Harbor and Puget Sound. It is also worth noting that one of the economic incentives that Grays Harbor adopted in its new 2022 pilot compensation agreement was the addition of a housing allowance under which the Port of Grays Harbor provides a housing allowance that reimburses its pilots for housing expenses including rent, lodging, taxes and fees.[92] Based upon David Lough's location factor adjustment data, net income of $497,759 in Grays Harbor equates to $543,055 in Seattle/Tacoma without accounting for the housing allowance in Grays Harbor.

73. Another important factor to consider in determining the level of distributable net income that the Commission should adopt in this case is the fact that no less than four of the rate orders in the record, two each from the Florida Board of Pilot Commissioners and Oregon Board of

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[91] Exh. MM-86X at 2.
[92] Exh. DL-22 at 2.

Maritime Pilots, ratified proposed tariffs including target net income levels for these major pilot groups handling significant levels of annual vessel traffic that were the results of settlements with the shipping industry. With the applicable cost-of-living adjustments in each of these four rate orders, the two Florida pilot groups (Port Everglades Pilots' Association and St. Johns Bar Pilots) are projected to receive highly comparable net incomes of $607,095 and $607,336 in 2023,[93] respectively, and the two Oregon pilot groups (Columbia River Bar Pilots and Columbia River Pilots) are projected by their administrative pilot or president to earn comparable net incomes of between $510,000 and $530,000 for the Columbia River Bar Pilots and between $500,000 and $540,000 for the Columbia River Pilots.[94] The following sentence from the OBMP rate orders approving rate settlements between the pilot group and industry in 2021 exemplifies the importance of a joint pilot group/industry proposal regarding a pilotage tariff increase:

> The existence of the settlement between the parties with differing interests as is the case with the settlement submitted on this record, supports a conclusion that these rates are reasonable, given the compromises made by the parties in the development of the settlement.[95]

74. Finally, consistent with Staff's recommendation, tariff funding of medical benefits for PSP's pilot corps should be restored, consistent with the standard practice in the maritime industry and 10 of the 12 pilot groups listed on the income/benefits table on pages 29-30, which notably includes the Grays Harbor Pilots and both Oregon pilot groups. And, as Staff conceded at hearing, this benefit should not be considered part of DNI or the more commonly used term "target net income."[96]

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[93] Exh. DL-8 at 10, DL-27 at 45.
[94] Exh. DJ-3T at 3; Exh. JN-3T at 4. Exh. DJ-3T at 3:16-18; Exh. JN-3T at 4:24-25.
[95] Exh. DL-14 at 8.
[96] Tr. at 842: 12-25-843:1-14.

D. <u>The Lack of Competitive Compensation and Benefits Undermines PSP's Ongoing Work to Diversify its Pilot Corps</u>.

75. With respect to the issue of diversity, equity and inclusion, the parties agree on three fundamental points: First, PSP's pilot corps suffers from a lack of diversity. Second, achieving greater diversity within the pilot corps is not only a moral imperative but is also critical to PSP's mission to ensure against the loss of lives, loss of or damage to property and vessels, and to protect the marine environment. And third, PSP is engaged in robust initiatives that prioritize DEI both internally and in the broader maritime community. Despite this broad agreement, however, PMSA through its expert witness Kathleen Nalty disputes that the current lack of competitive compensation and benefits is impeding PSP's ability to improve diversity in its pilot corps. PMSA's position is inconsistent with the facts on the ground, and lacks a sophisticated appreciation of the challenges associated with attracting diverse candidates from within the extraordinarily small pool of elite mariners who are qualified to be pilots.

76. During cross examination, PMSA witness Kathleen Nalty commended PSP for its DEI efforts on multiple fronts, including its nation-leading maternity leave policy and on the commitment to inclusion reflected in the testimony of Captain Sandy Bendixen. Although Ms. Nalty appeared to have limited knowledge of PSP's broader DEI efforts including its educational outreach programs, the majority of her cross-examination testimony and views on DEI were consistent with PSP's own philosophy and, more importantly, its actions.

77. Ms. Nalty also fails to appreciate (or, at least, to acknowledge) the unique challenges to improving diversity within a pilot group, and the central role that competitive compensation and benefits play in overcoming those obstacles. Ms. Nalty's lack of understanding is perhaps not surprising given her lack of experience working with the maritime sector. Multiple

trailblazing female pilots including Captain Bendixen, Captain Dempsey, and Captain McIntyre strongly rejected Ms. Nalty's conclusion that competitive compensation is unnecessary to achieve PSP's DEI goals. Most notably, Captain Bendixen testified explicitly that despite her firsthand experience with PSP's inclusive culture, she could not in good conscience encourage a fellow female mariner to apply to join PSP when she knows that the economic opportunities are superior in virtually every other U.S. pilotage ground.[97]

78. Due to institutional inequity, the number of U.S. mariners from underrepresented backgrounds who today possess the years of training and experience necessary to become pilots is extremely limited. PSP is working hard to help remediate that deeply rooted problem through its involvement in educational and outreach programs that will, in the mid to long term, develop a broader pipeline of diverse candidates. Currently, however, PSP's ability to diversify its pilot corps depends on its ability to recruit from within the existing group of qualified candidates. That effort requires PSP to compete hard on the merits with other pilot groups who are also seeking to improve their pilot corps through greater diversity. The record is clear that PSP cannot compete effectively (and is thereby hamstrung in its mission of safety and environmental protection) when these candidates understand that PSP now offers uncompetitive pay and benefits.

[97] Bendixen, Exh. SB-1T at 5:11-26-6:1-2.

IV. PSP'S PAY-AS-YOU-GO PENSION SHOULD BE FUNDED IN THE TARIFF AND THE UTC SHOULD ORDER A TRANSITION TO A FULLY FUNDED DEFINED BENEFIT PLAN.

A. PSP's Pay-As-You-Go Pension is Known and Measurable Expense That Must Be Funded in the Tariff.

79. Despite the considerable savings associated with transitioning PSP's currently unfunded pension plan to a fully funded defined-benefit plan, the PMSA not only remains vigorously opposed to recognizing PSP's legally binding pension obligations but characterizes PSP's legitimate interest in retaining tariff funding for a known and measurable pension expense funded in the tariff for decades as an attempt by PSP to illegally "foist" its pension costs on "ratepayers."[98] Considering that the current pension accrual rate for the PSP pension plan was unanimously adopted by the BPC in response to a joint PSP/shipping industry proposal in 2001, the extreme character of PMSA's position in the months preceding the filing of this rate case and in all of its pension-related testimony in this case reveals its utter lack of good faith on this issue.

80. After several months working with a pension law expert and an actuary to be fully informed of its options and fiduciary obligations, PSP initiated the UTC-ordered stakeholder engagement process with a comprehensive letter dated January 28, 2022 to all stakeholders that enclosed PSP's Pension Plan and census data and promised 50-year cost projections for two different pension transition scenarios within days.[99] On February 1, 2022, those 50-year cost projections as well as all actuarial methods and assumptions were mailed out along with a notice that the first stakeholder meeting with a well-regarded Seattle mediator would be scheduled six weeks down the road on March 2, 2022 in order to give all stakeholders the

[98] Moore, Exh. 63T at 19:23-25.
[99] Declaration of Michael E. Haglund filed July 18, 2022, ¶ 8.

time to analyze PSP's information, engage their own experts and to perform their own analyses.[100]

81. In early February, PMSA objected to utilizing PSP's proposed mediator. PSP followed up promptly and attempted to resolve the objection. PSP's counsel talked on February 9, 2022 with PMSA General Counsel Mike Jacob.[101] During this telephone discussion, Mr. Jacob suggested that there was really no need for a mediator or other facilitator and that the parties could simply proceed with direct negotiations.[102] PSP agreed to proceed on that basis and saw no inconsistency with the UTC's order, which suggested the pension workshops "should be facilitated by a mutually acceptable third-party with expertise in retirement planning, such as an actuary,"[103] but contained no prohibition on the parties stipulating to proceed with face-to-face negotiations. As the record reveals, those negotiations did not make progress of any kind and the subsequent UTC-ordered mediation using a mediator proposed by PMSA and agreed to by PSP was unsuccessful. PMSA's contention that PSP "refused to discuss or consider the identification of a mutually acceptable third-party to facilitate a series of workshops"[104] is simply not true. PSP did the work necessary to be an informed participant in the workshops, which failed to make any progress, and then filed a much-needed second rate case before the UTC. The record on this issue is much more consistent with the conclusion that attempting to negotiate a compromise between PSP and PMSA on a PSP pension plan transition was an exercise in futility than the PMSA notion that PSP shortchanged the process.

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[100] *Id.* ¶ 9.
[101] *Id.* ¶ 10.
[102] *Id.*
[103] Order 09, ¶ 192.
[104] Moore, Exh. MM-1T at 255:20-22.

82. PSP's current pension plan, which dates back to 2001, provides a 1.5% per year annual accrual rate that is applied to the average of the retiring pilot's DNI over the last three years of their career. As an example, for a pilot with a 20-year pilotage career, this pension generates an annual benefit of 30% of the pilot's average DNI over the last three years and their surviving spouse receives 50% of that benefit for the balance of their life. Two points are worth emphasizing regarding the history of the PSP pension plan.

83. First, this plan was clearly reasonable when adopted by PSP and approved by the Board of Pilotage Commissioners in 2001 because it was the subject of a joint proposal by PSP and the shipping industry, then represented by PMSA's predecessor, the Puget Sound Steamship Operators Association, and Polar Tankers, Inc., still a major oil carrier in Puget Sound. In a joint proposal presented at a rate hearing on May 10, 2001 before the BPC, these parties jointly proposed an increase in the pension benefit accrual rate from 1.25% to 1.5% per year of service. The precise language presented to the BPC in this joint proposal stated:

> Also, it is jointly proposed that the *Amended Retirement Program of Puget Sound Pilots* be revised, subject to ratification by the PSP membership, to reflect an adjustment in benefit rate from 1.25% to 1.50% for each year of service. The adjustment is intended to cover all future PSP retirees. Based on our joint proposal, the benefits for former PSP members and/or their surviving spouses who are currently receiving benefits is to be increased by twenty percent (20.00%).[105]

84. Following the May 10, 2001 hearing, the BPC convened its regular monthly meeting and unanimously approved the joint proposal in all of its particulars including target net income of $192,237 and the following two bulleted items related to the PSP pension:

> - Tariff funding of an increase of 20% in retirement benefits for former PSP members and/or their surviving spouses who are currently receiving benefits
> - An adjustment in the benefit rate from 1.25% to 1.5% for each year of service in the Amended Retirement Program of Puget Sound Pilots[106]

[105] Exh. WST-2T at 2:12-15.
[106] Exh. MM-91X at 1.

85. Second, the existing and ongoing PSP pension expense remains a clearly reasonable, known and measurable expense because it ranks in the lower half of the 17 pay-as-you-go or farebox pilot group pension plans in the U.S.[107] This comparison, which pulls the pay-as-you-go pension data from an exhibit prepared by the American Pilots' Association,[108] shows nine pilot groups with annual benefit accrual rates of 2% to 2.5% per year (with six of these plans capping total benefits at 50% of either the pilot's highest year of compensation or an active pilot's income). Within the eight pilot groups making up the balance of this comparison, PSP's 1.5% accrual rate falls in the middle between the 1.84% benefit for the San Francisco Bar Pilots at the high-end and the 0.8% per year benefit for the Boston Pilots at the low end.[109] Looking at the PSP pension plan from a national perspective, it is clearly not overly generous and should be determined to be reasonable, especially considering that the 2001 increase in benefit accrual rate from 1.25% to 1.5% was supported by the shipping industry and unanimously approved by the BPC in 2001.

86. Despite this history, the PMSA position is to "adamantly oppose" tariff surcharges to fund the PSP pension whether on a pay-as-you-go basis or as part of a transition to a fully funded defined-benefit plan.[110] In fact, PMSA urges the Commission to eliminate funding for the PSP pension in the tariff and impose its full cost on PSP on the theory that it is illegal for PSP to impose its legally binding pension obligations owed to retired pilots and their surviving spouses on vessels requiring pilotage services because these charges constitute either a "past" or "future liability" that cannot be imposed on a current ratepayer. According to the PMSA:

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[107] Exh. MM-94K at 1.
[108] Exh. CLD-5.
[109] *Id.*
[110] Moore, Exh. MM-1T at 219:23.

"If PSP has received payment for a pilotage service provided pursuant to the tariff, then there is no basis for the creation of any further liability to that vessel or any future vessel receiving pilotage services."[111] In other words, PSP's pension costs should be absorbed entirely by PSP because charging vessels for the pension costs of retired pilots no longer providing pilotage services runs afoul of PMSA's view "that the actual vessel should not be billed twice for the same service … Future vessels should pay for the costs of providing service to future vessels, just as past vessels paid for the costs of providing past service to past vessels."[112]

87. In his cross-answering testimony, the PMSA's Captain Moore inexplicably shifts position from opposing any funding for PSP's pension to agreeing with UTC Staff that PSP's 2023 pro forma pension expense of $902,438[113] (the difference between 2021 test year pension expense of $5.5 million and the estimated 2023 pro forma expense of $6.4 million) should be disallowed because, according to Senior Regulatory Advisor Mike Young, leaving tariff funding for pension costs at the level of the previous rate case represents "the best currently available known and measurable proxy for pension costs going forward."[114] In cross-examination, however, Mr. Young admitted that PSP's pension costs were in fact verified to be $5.5 million in PSP's audited financial statement for 2021 and that going back to the amount approved in Order 09, which was $5.25 million, would add $250,000 to the deficit tariff funding advocated for by Staff (and now supported by PMSA), bringing the total underfunding of known and measurable pension costs to $1.15 million.[115]

[111] *Id*. at 224:4-7.
[112] *Id*. at 226:10-15.
[113] Moore, Exh. MM-63T at 19:13-16.
[114] Young, Exh. MY-1T at 23:1-2.
[115] Tr. at 825:2-6.

88. The remarkably punitive and wholly unsupported position of both PMSA and Staff is foreclosed as a matter of law by the 1943 decision of the Washington Supreme Court in *State ex rel. Pacific Telephone & Telegraph Co. v. Department of Public Service*,[116] which soundly rejected PMSA's two major arguments against tariff funding for the PSP pension in this case. First, in rejecting the argument of the Washington Department of Public Service that the costs of the telephone utility's private pension plan should be disallowed, the Court noted that the pension plan had been established "thirty years ago" and that there "could be no question but that as a general proposition such a pension plan as that under discussion is desirable, and is beneficial to the utility, to its employees, and to all concerned."[117] The Court also quoted with approval the following language from the Minnesota Supreme Court upholding the inclusion of a utility's pension costs in the authorized rate base:

> If the amounts are reasonable and actually paid as pensions, or allocated to a fund in pursuance of a feasible plan whereby it is assured that the sums so allocated will be used to pay pensions in reasonable amounts, allowance should be made.[118]

89. This clear holding by the Washington Supreme Court mandates rejection of the extreme PMSA/Staff position and requires full funding of PSP's ongoing pension expense, preferably through an annual automatically adjusting tariff surcharge. PSP's pension benefits are clearly reasonable and are verified by audit to be actually paid as pension benefits to retired pilots and their surviving spouses. Further, with respect to the $70,000 per year pension being paid to PSP's longtime Executive Director and General Counsel Walt Tabler, the same regulatory principle should apply. Where there is no evidence to suggest that PSP's decision to grant this

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[116] 19 Wash.2d 200 (1943).
[117] *Id*. at 254.
[118] *Id*. at 254-55.

pension benefit to the organization's long-time top executive was unreasonable, it must be funded through the tariff.

90. Second, the PMSA argument that PSP's past pension liabilities cannot lawfully be imposed on future pilotage customers not only has never been accepted by the any other pilotage regulator in the United States, but was squarely rejected by the Washington Supreme Court in the *Pacific Telephone & Telegraph* case in the following unequivocal statement:

> In the case at bar, it appears that when respondent first set up its pension system, it was operated on a "pay-as-you-go" plan, and that in 1928, the company changed this system, adopting an accrual plan of payment based upon actuarial tables and studies. Appellant argues that under this system, a charge was imposed upon present rate payers to make up a deficiency in the pension fund which existed prior to 1928, and that the change in plan violated the principle that past losses cannot be recovered from present or future rate payers. Appellant suggests that under the present system, the rate payers are contributing to the existing unfunded actuarial reserve, because many of respondent's employees were so employed prior to 1928, and for the basis of computing their retirement pay, that service is considered.
>
> Difficulties are always experienced, whether by governmental agencies or private businesses, in setting up new spheres of operation of established governmental agencies or private businesses. If a change is to be made, a new system must have a beginning, and if a system is to be terminated, it must have an end. Save in so far as basic legal principles or definite rights of individuals or groups are violated, the law does not arbitrarily forbid change, nor does it control the future by establishing the past or the present as an immutable mold from which patterns must be taken for future years. *State ex rel. Oregon R. & N. Co. v. Railroad Commission*, 52 Wash. 17, 100 P. 179.[119]

91. The two experts engaged by PSP both have highly relevant experience that is reflected in the expertise each brings to their testimony in this case. Pension attorney Bruce McNeil's more than 40 published books regarding employee benefit plans has earned him a national reputation in the field. He has considerable experience with Multiple Employer Plans and offers the unequivocal opinion that PSP "could establish a multiple employer plan ("MEP")

[119] *Id*. at 259.

that provides benefits substantially identical to the benefits provided to PSP retirees under the current unfunded pension plan."[120] According to Mr. McNeil, the only preconditions to transitioning PSP's pay-as-you-go pension plan to a fully funded ERISA-qualified MEP are the issuance of two determination letters, one from the Internal Revenue Service and the other from the U.S. Department of Labor.[121] As Mr. McNeil testified in writing and at hearing, he has discussed the issues to be considered in each of these determination letters with key agency staff at IRS and the Department of Labor and is confident that both determination letters will be issued in the affirmative, specifically authorizing the transition of PSP's pay-as-you-go pension plan to a fully funded MEP.[122]

92. Remarkably, neither PMSA nor UTC Staff engaged a pension attorney and these parties are therefore in no position to offer any evidence rebutting Mr. McNeil's pension law analysis. However, given Mr. McNeil's extraordinary level of expertise developed over nearly 40 years in drafting pension plans of all types including defined benefit pension plans, the range of his pension law publications and his current service as editor-in-chief of two major pension law journals, the Commission should have confidence in relying on his analysis as authoritative and almost certainly correct in every detail. PMSA actuary Christopher Noble acknowledged that he was not a pension lawyer, but nonetheless attempted to raise a number of legal concerns about transitioning the PSP pay-as-you-go pension plan to an MEP in his written testimony and again at hearing. In brief, Mr. Noble questioned whether a Form 5500 would need to be filed annually with IRS for each of the pilot employers participating in the PSP MEP as opposed to a single Form 5500.[123] Mr. McNeil was clear in his testimony that only

[120] McNeil, Exh. BJM-1T at 5:4-6.
[121] McNeil, Exh. BJM-4T at 3:1-9.
[122] McNeil, Exh. BJM-4T at 3:6-9; Tr. at 448:6-15.
[123] Noble, Exh. CN-1T at 23:1-11.

one Form 5500 would be required that would contain an attachment "identifying participating employers and providing an estimate of the contributions of each employer each year."[124] Mr. Noble also raised concerns about the section 401(a)(17) limit on compensation that may be taken into consideration in a tax-qualified defined benefit plan,[125] but that concern was laid to rest by Mr. McNeil's clear explanation of how a simple calculation at the time of a PSP pilot's retirement could be made to ensure that the new retiree was receiving exactly the 1.5% benefit multiplied by their last three years of DNI promised under the PSP pension plan, all of which is clearly within the requirements of U.S. pension law.[126]

93. PSP's expert actuary Christopher Wood also brings extraordinarily relevant past experience to his expert witness work in this case, both with respect to the stakeholder engagement process and this proceeding. This is because Mr. Wood served as the lead actuary for two public ports and ultimately performed all of the actuarial analysis in connection with a transition ordered by the Oregon Board of Maritime Pilots in the mid-1990s under which Oregon pilot groups changed from pay-as-you-go pension plans to funded defined contribution pension plans.[127] Mr. Wood responded to a number of the issues raised by Mr. Noble in his rebuttal testimony and at hearing. First, with respect to the 5% rate of return on pension fund investments net of costs, Mr. Wood explained why that projection is conservative, which makes the projected cost savings associated with a transition of PSP's existing pension plan to a fully funded defined-benefit plan conservative as well.[128] Further, after accounting for the potential actuarial and legal services costs as well as the potential range of premiums paid to the

[124] McNeil, Exh. BJM-4T at 5:22-6:14.
[125] Noble, Exh. CN-1T at 20:15-23.
[126] McNeil, Exh. BJM 4T at 6:16-25-7:1-15.
[127] Wood, Exh. CRW-1T at 1:9-17.
[128] Tr. at 682-84.

Pension Benefit Guaranty Corporation, the two different PSP pension transition scenarios generated savings of $124 million under Alternative 1 and $100 million under Alternative 2.[129]

94. As pension law expert Bruce McNeil stated at hearing, "hopefully in less than a year" IRS and the Department of Labor would issue their respective determination letters approving the PSP pension plan transition to a fully funded MEP.[130] Therefore, in order to provide adequate time between the issuance of a rate order in this case and the agency responses to the required determination letters, PSP recommends that the Commission allow time for these preconditions to be met and order that PSP transition its existing pay-as-you-go pension plan to a fully funded defined-benefit plan effective January 1, 2025 and that, provided the UTC adopts the pension-related automatic adjusters discussed below, PSP utilize a 30-day compliance filing to be filed no later than December 1, 2024 to establish the tonnage-based rate necessary to fund the pension plan transition beginning on January 1, 2025.

VI. MULTIPLE AUTOMATIC TARIFF ADJUSTERS SHOULD BE ADOPTED.

95. Pursuant to RCW 81.116.030(2)(c), the Commission is clearly authorized to approve a pilotage tariff "with an annual or periodic adjustment mechanism," provided the petitioner provides "information justifying such a mechanism." In this case, PSP has proposed five automatic tariff adjusters, all of which serve the function of adjusting the tariff on an annual basis to account for changes in economic conditions or cost categories that will true-up the tariff and/or specific tariff item to the underlying revenue requirement assumptions determined by the Commission in this rate proceeding. Adoption of these automatic tariff adjusters will ensure that the tariff approved in this rate case is actually generating revenues

[129] Wood, Exh. CRW-6T at 6:12-24.
[130] Tr. at 445:19-22.

that closely approximate the approved revenue requirement (neither over-collecting nor under-collecting). As a result, based on the common usage of automatic tariff adjusters by other pilotage regulators throughout the United States, the Commission can expect a significant reduction in the frequency of pilotage general rate proceedings. Indeed, in its January 18, 2018 report to the Washington legislature entitled "Washington State Pilotage Final Report and Recommendations," the consultant engaged by the legislature characterized the use of automatic tariff adjusters, particularly an annual cost-of-living adjustment, as a "best practice" used by other pilot group regulators.[131]

96. It is also worth noting that the only significant period of relative rate peace between PSP and the shipping industry in the last 25 years within the Puget Sound pilotage district occurred 2001-2006, a period of more than five years during which the pilotage tariff was adjusted annually using no less than three automatic annual tariff adjusters including two of those sought by PSP in this rate case. These three adjusters were the result of a joint proposal by PSP, the Puget Sound Steamship Operators Association and Polar Tankers, Inc., which was embodied in a Memorandum of Understanding ("MOU")[132] that was unanimously approved by the BPC in May 2001. This MOU included a Vessel Traffic Formula that utilized an agreed-upon maximum Safe Assignment Level that was used to generate the authorized number of licensees plus one position for the PSP president, an annual cost-of-living adjustment utilizing the Consumer Price Index for the Puget Sound area and an annual operating expense adjuster tied to PSP's audited financial statements.

97. This 2001 MOU made the BPC's annual tariff setting process very formulaic for five straight years. This experience within the Puget Sound pilotage district and that from other pilotage

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[131] Royer, Exh. JR-23 at 73.
[132] Exh. MM-90X.

districts across the country demonstrates that the use of well-crafted formulaic automatic tariff adjusters is good public policy, generates consistently fair, just, reasonable and sufficient tariff rates that respond to appropriate economic and other inputs and dramatically reduces the need for expensive, time-consuming contested general rate proceedings. PSP seeks five automatic tariff adjusters in this case. In order of priority, these include an annual cost-of-living adjustment tied to the Consumer Price Index for the Seattle/Bellevue area, an automatic adjuster for new licensees or new retirees, an annual traffic adjuster that removes the volatility factor from PSP's highly diverse mix of vessel types, and two pension-related adjusters designed to collect the funds necessary to fund the PSP pay-as-you-go pension plan and, if approved by the UTC, fund the transition of that plan for all working pilots and future licensees effective beginning January 1, 2025. Each of these five automatic tariff adjusters is discussed in turn below.

A. **Annual CPI-Based Cost-of-Living Adjustment**.

98. The use of annual cost-of-living adjustments to pilotage tariffs by pilotage ground regulators is very common. In fact, more than half of the 24 states regulating pilot groups and the entire seven-state Great Lakes pilotage system administered by the U.S. Coast Guard adjust their tariffs with an annual cost-of-living adjustment.[133] The most common means by which those adjustments are made is through utilization of the Consumer Price Index ("CPI") for the local area. For the Puget Sound pilotage district, that should be the CPI for the Seattle/Bellevue area, a position that is supported by Staff.[134] PSP proposes that this COLA be effective on February 1 of each year based upon the CPI for the Seattle/Bellevue area for the 12 months ending September 30 of the prior year.

[133] Exh. DL-24.
[134] Exh. MY-1T at 14:17-15:12.

B. Quarterly or Annual Tariff Adjuster Following Licensure of a New Pilot or the Retirement of a Current Licensee.

99. Using an updated DNI figure of $574,087 and a combined annual per pilot cost of $62,943 for insurances, training and license fee costs, PSP's requested revenue requirement in this case totals $50.5 million. Assuming the Commission approves the requested DNI and the annual per pilot expenses of $62,493, the cost of each new licensee totals $636,580, which represents 1.26% of the total revenue requirement. The benefits/expense figure per pilot includes the following components: license fee, $6500; medical insurance, $34,695; other insurances, $3619; portable pilot units, $8729; training expense, $6000; and dues, $3400.[135] PSP proposes that this adjuster take effect in the quarter following the issuance of a new license or a new retirement or, alternatively, on an annual basis.

100. Because the cost of each new licensee is significant (and there is an identical level of savings for each retiree), it only makes good sense to adjust the tariff to account for the increased cost of a new licensee or alternatively to reduce that cost by the same amount in the event of a retirement.

101. In a very recent rate order, the Louisiana Pilotage Fee Commission approved an increase in the authorized number of pilots in the Crescent River Port Pilots Association, which serves the lower Mississippi River between just inside the mouth of the river to New Orleans, from 122 to 137 pilots.[136] As part of that order, the LPFC determined that rates would increase over time as new pilots were licensed, thus right-sizing the tariff to the number of licensed pilots serving that pilotage ground.[137] PSP seeks the same type of automatic tariff adjuster, which

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[135] Exh. WTB-5.
[136] Exh. DL-7 at 36.
[137] *Id*. at 54.

serves both the pilot group and industry on an equalized basis, moving the tariff up for new licensees and down for retirements.

102. In addition, PSP has a significant safety-based rationale that supports adoption of this automatic adjuster. World-renowned sleep medicine and fatigue expert Dr. Charles Czeisler, longtime head of the Sleep Medicine Department at Harvard Medical School, presented testimony regarding the importance of reducing the level of callback jobs performed by off-watch PSP pilots from the currently excessive levels of 16% to 20% as a percentage of total assignments annually to below 5%. [138]

103. This automatic adjuster is especially important in the unique regulatory setting that exists for pilotage in Washington where the UTC performs ratesetting while the BPC is responsible for all other aspects of pilotage regulation including determining the authorized number of pilots necessary to safely and efficiently operate Puget Sound's compulsory pilotage system. In light of this bifurcated regulatory responsibility, both the UTC and BPC should approach certain aspects of their decision-making with an eye toward how a particular decision impacts a sister agency. Given the likelihood that the BPC will be asked by PSP to increase the authorized number of pilots to facilitate reduction in the number of callback jobs, this proposed adjuster facilitates tariff adjustments that will accommodate the potential for a BPC decision to increase the authorized number of pilots above the currently approved level of 56 FTE without the need for a new rate proceeding before the UTC to fund those positions.

C. <u>Annual Traffic Adjuster</u>.

104. PSP's proposed annual traffic tariff adjuster is designed to address the inevitable fluctuations in Puget Sound vessel traffic resulting from the multiple volatility factors described by

[138] Czeisler, Exh. CAC-1T at 84-85 and Exh. CAC-4T at 4.

shipping economist Ken Eriksen, who provides considerable data documenting the factors contributing to the volatility of Puget Sound's diverse mix of cargoes and vessel types. In Mr. Eriksen's opinion, given the highly diverse character of the vessel traffic calling Puget Sound ports and terminals, "continued volatility is likely" and "it is not realistic to predict with any degree of certainty the volume of vessel traffic annually in Puget Sound."[139]

According to Mr. Eriksen, the UTC's current use of a five-year rolling average is inappropriate and a shorter term quarterly or annual traffic adjuster to the tariff makes abundant sense.

105. PSP proposes use of a single metric, total pilot assignments in a calendar year, to inform this traffic-based tariff adjustment formula. To implement this automatic tariff adjuster, the Commission need only determine the pilot assignment number that will be used to derive the revenue requirement in this case. PSP proposes use of the 7443 assignment level utilized in its 2023 pro forma, which is very close to the actual pilot assignment figure of 7483 in 2022.[140] Because PSP's pilot assignment figures are maintained both by PSP and the BPC on a monthly basis, the calendar year figure could easily be submitted to the UTC by January 15 of the following year so that it could be implemented effective February 1 of that calendar year. Under PSP's proposal, all components of the tariff except specifically designated surcharges such as the BPC training surcharge and PSP's proposed pension-related surcharges would be increased by the percentage difference (up or down) between the assumed level of annual pilot assignments determined for the revenue requirement in this case and the actual traffic in a calendar year. Considering that the Final Order in this case is projected to be issued in mid-

[139] Eriksen, KAE-1T at 16:1-5.
[140] Exh. IC-13 at 1. Note that the total assignment level for 2022 was not added correctly. The 12-month total is 7483, not 7843.

2023, PSP proposes that the traffic-related adjuster be implemented based upon actual total pilot assignments in 2023, reported to the UTC by January 15, 2024 and then implemented effective February 1, 2024.

D. <u>Pay-As-You-Go Pension Plan Adjuster</u>.

106. As described in the testimony of Michael J. Titone, the common practice by pilotage regulators utilizing an annual surcharge to collect projected pension costs in a given calendar year is based upon a report prepared by an actuary.[141] This report generates a projected annual pension cost figure based upon the current level of retirees, the level of their benefits and a projection of new retirements and their benefits. For PSP, the benefit calculation is a simple one and, once determined at the point of a pilot's retirement, is fixed for their lifetime and then, in the event their spouse is surviving, the spouse is entitled to a 50% share of the same benefit.

107. As is the practice in most states, to the extent the pay-as-you-go pension surcharge over-collects or under-collects the projected calendar year pension costs due to fluctuations in traffic, that overage or underage is accounted for in the calculation for the following year, resulting in long term stability for ratepayers. PSP recommends that this annual pension-related surcharge be implemented effective February 1, 2024 and annually thereafter based upon a report filed with the UTC by January 1 of the year preceding the effective date of the pension-related surcharge.

E. <u>Funded PSP Defined Benefit Multiple Employer Plan Adjuster</u>.

108. If the Commission orders a transition of the PSP farebox pension to a defined benefit Multiple Employer Plan using either one of the two scenarios described in the testimony of PSP actuary

[141] Titone, Exh. MJT-1T at 7:13-23.

Christopher Wood, PSP proposes that the annual surcharge to collect the necessary funds to accomplish that transition be based upon an actuarial report that projects the funds necessary in each of the first 15 years of the new Multiple Employer Plan to fully fund that plan. As described in Section V of this brief, this transition would not occur until after IRS and the Department of Labor both issued determination letters approving the new PSP Multiple Employer Pension Plan and, given the significance and complexity of this transition, PSP proposes that the actuarial report establishing the level of transition costs for calendar year 2025 be submitted to the UTC by November 1, 2024. This actuarial report would take into account all relevant census data, projected retirements and all pertinent cost considerations that go into an actuarial projection of this type, one that is performed on an annual basis on other pilotage grounds including the San Francisco Bar pilotage ground.

VII. SECONDARY ISSUES: TOTE MARITIME'S UNJUSTIFIED REQUEST FOR PREFERENTIAL RATES AND DISPUTED EXPENSE ITEMS.

A. TOTE's Request for Discriminatory Preferential Treatment Should be Denied.

109. PSP provides pilotage service to a wide range of ships of different sizes and configurations, engaged in both foreign and domestic trade, on waterways from Cherry Point, to Anacortes, to the constricted ports of Tacoma and Seattle. In *all* cases, ships pay the tonnage component of PSP's pilotage rates according to their GT ITC. Of PSP's hundreds of customers, only one has objected to the practice of charging tonnage based on GT ITC: TOTE. The evidence presented in this rate case – including the direct testimony of tonnage expert Phil Essex, shipping economist Ken Erikson and Captain Eric Klapperich, and the cross examination of TOTE witnesses Phil Morrell and Captain Eric Loftfield – demonstrates unequivocally that GT ITC

is the appropriate rate-setting metric that should (and does) apply to all vessels that engage PSP's services.

1. **<u>GT ITC is the most appropriate rate-setting tonnage metric</u>.**

110. A ship's "tonnage" refers to its volumetric size, calculated in accordance with a given tonnage measurement system. For centuries, maritime states used different tonnage systems, resulting in inconsistent and discriminatory port fees. In 1969, maritime states convened the International Convention on the Tonnage Measurement of Ships to establish a uniform tonnage measurement system. That system, known as GT ITC, provides an accurate and standardized measure that can be applied to generate an apples-to-apples comparison of ships' true size.

111. The BPC uses tonnage thresholds to ensure that larger ships – i.e., ships that are comparatively riskier and more challenging to pilot – are piloted by more experienced pilots.[142] Likewise, PSP's tariff includes tonnage as a rate component because larger ships present greater risks and should in fairness pay more to account for that fact. In both cases, the tonnage metric used by the BPC and PSP is GT ITC, precisely because that measurement system provides the most consistent, standardized, and accurate measure of a ship's true size.

112. GRT does not accurately measure a ship's size and does not generate an apples-to-apples comparison among ships. That is because unlike GT ITC, the GRT system excludes or "exempts" certain spaces including "open space." As tonnage expert Phil Essex explains in his testimony, an entire cottage industry of "tonnage design" exists for the sole purpose of artificially reducing a ship's GRT in order to avoid or minimize regulatory burden.[143] As to TOTE's roll-on/roll-off sister ships, the Midnight Sun and the North Star ("ORCA Ships"),

[142] WAC 363-116-082; Tr. at 273:1-24.
[143] Essex, Exh. PE-1T at 1, 6-7.

small openings at the stern of the ships' main and second decks cause most of this space to be excluded from GRT despite the fact that these large decks are enclosed by the ORCA Ships' side shell, carry cargo, and comprise approximately half the ships' hull. As a result, the ORCA Ships' GRT is equivalent to the GT ITC of much smaller ships.

113. At over 65,000 GT ITC, the massive ORCA ships are so large that they can only be piloted by a pilot who has held and upgraded their license annually for a minimum of three years.[144] Yet if the Commission were to grant TOTE's request for preferential treatment, its ships would pay a tonnage charge nearly identical to vessels that are about half the volumetric size of the ORCA Ships' size and present far less risk and difficulty to pilot.[145] The naked favoritism that TOTE requests is directly contrary to the Commission's duty to set fair and nondiscriminatory rates.

2. <u>TOTE's arguments lack merit</u>.

114. In its original petition, TOTE claimed that its ships should be charged based on GRT merely because they are engaged in coastwise rather than foreign commerce. TOTE also claimed that its 839-foot ro/ro ships were "small" and that it would suffer rate shock if required to pay pilotage on the same non-discriminatory basis as other vessels. In its response testimony in this rate case, TOTE asks the Commission to disregard the ORCA Ships' large size based on the supposed superiority of their propulsion systems relative to a hypothetical "typical" vessel. None of TOTE's arguments have merit, and each is addressed briefly in turn.

115. First, the fact that TOTE's ships are engaged in coastwise rather than foreign trade is irrelevant. TOTE's claim that a caveat in the tariff is needed because domestic vessels might not have a GT ITC measurement is incorrect, as demonstrated by the fact that PSP provides

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[144] WAC 363-16-082.
[145] Essex, Exh. PE-1T at 11-12.

service to dozens of domestic vessels, all of which have GT ITC measurements. In fact, since1992, all domestic ships above 79 feet length-over-all are required by the Coast Guard to have a GT ITC measurement.[146] More importantly, it is beyond dispute (and TOTE witness Captain Loftfield conceded)[147] that the mere fact that a ship is sailing coastwise has no effect whatsoever on the risk and difficulty of piloting that ship.

116. Second, TOTE's claim that the ORCA Ships are "small" and that it would suffer rate shock if required to pay pilotage on the same non-discriminatory basis as PSP's other customers is not credible. The ORCA Ships are not small. These are massive ro/ro ships that are as long as three football fields. And although the incremental difference in revenue appears significant at first blush on an annual basis, that cost is amortized over hundreds of highly valuable commercial transits.

117. In its opening statement, TOTE accused PSP of failing to present evidence on the rate shock issue. In fact, however, PSP presented unrebutted testimony from shipping economist Ken Erikson that pilotage rates are a de minimis cost to commercial ships and that rate shock in this context is not possible[148]. Specifically, as to TOTE, Mr. Erikson testified:

> **Q: Do you believe there is any sort of "rate shock" for TOTE Maritime associated with the fact that an historic discount this company was receiving that was not made available to any other pilotage ratepayer was eliminated in the UTC's 2020 rate order in the interest of adopting a tariff that provided for nondiscriminatory rates?**
>
> A: No. Given the economic insignificance of pilotage rates to vessel voyages as discussed above, there is no potential "rate shock" associated with eliminating an unfair discount provided to a single buyer of pilotage services.[149]

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[146] Tr. at 385:22-24.
[147] Tr. at 301:24-302:4.
[148] Ironically, TOTE presented no evidence that the incremental difference pilotage cost would have any impact whatsoever on its commercial operations.
[149] Eriksen, KAE-5T at 14:5-12.

Other evidence in this rate case uniformly corroborates Mr. Erikson's testimony. For example, the fact that TOTE waited more than six months after PSP's tariff became effective to file its petition contradicts its claim of financial hardship. Likewise, the fact that TOTE regularly pays pilotage based on GT ITC in British Columbia without objection strongly undercuts its claim that it is somehow unreasonable to require it to do so on Puget Sound. While PSP applauds TOTE's decision to make the safe choice to carry a state-licensed pilot, it is notable that unlike most PSP customers, TOTE is not subject to compulsory pilotage. TOTE's voluntary decision to hire PSP's service further demonstrates the value of pilotage and corroborates that paying PSP's rates makes economic sense for TOTE regardless of the incremental difference in cost between GRT and GT ITC.

118. Lastly, the Commission should reject TOTE's argument that it should receive a special rate based on factors other than the ORCA Ships' size, such as their cargo capacity or the supposed advantages of their propulsion systems. PSP provides service to hundreds of ships per year. These ships vary widely in their design and the cargo they carry. There is no such thing as a "typical" piloted vessel on Puget Sound. Rather, different ships may present advantages or disadvantages depending on any number of factors that are simply not practical to incorporate in rate setting. For example, should a cruise ship receive a rate discount if it has a bow thruster? What if the bow thruster is disabled or is not utilized on a particular transit? Should an oil tanker pay less for a departing transit than an arrival if its load is less? How should that difference be calculated? Should ships with high side shells and a large sail area like the ORCA Ships pay more when wind speed increases?

119. The highly subjective and individualized ship-by-ship risk assessment that TOTE advocates is unworkable and would not lead to fair (or even predictable) rates. That is why no pilotage

district does what TOTE suggests. Conversely, a tonnage charge applied consistently to all vessels based on an apples-to-apples measurement of GT ITC is a standard rate-setting practice that results in rates that are fair and predictable, while accounting appropriately for the increased risk and difficulty that larger vessels present.

3. <u>The deferred revenue should be distributed to PSP</u>.

120. In sum, there is absolutely no basis to grant TOTE favoritism in the form of a substantial discount relative to PSP's other customers. While the Commission understandably preserved TOTE's claim in order to address this issue on a full record, the evidence in this rate case could not be more clear: The tariff adopted pursuant to Order 09 incorporates the correct tonnage measurement of GT ITC and should be consistently applied. The deferred revenue should be distributed to PSP and TOTE should continue to pay pilotage based on its ships' GT ITC, just like every other piloted vessel – foreign or domestic; twin screw or single screw – that calls Puget Sound.

B. <u>Outstanding Disputed Expense Items</u>.

121. At this point, the record should be abundantly clear that PSP concedes that $399,350 in accrued callback expense should not be included in the PSP revenue requirement. Outside of the dispute over the PSP pension costs that are known and measurable and therefore should be funded, there are just five outstanding disputes that are material regarding the allowances for PSP expenses, which are discussed below.

1. <u>Tabler Consulting and Red Cloud Consulting expenses</u>.

122. The record supports a finding that PSP engaged multiple consultants to address Commission directives regarding callbacks and improved dispatch efficiencies. This consulting work effort involved PSP's former executive director and general counsel Walt Tabler and work with

RedCloud Consulting regarding dispatch programming and data tracking that showed promise early on, but which was suspended in order to await the outcome of this rate proceeding.[150] Given the complexity of this work, PSP should receive the benefit of the doubt regarding the reasonableness of these expenses. Indeed, staging consulting work designed to respond to Order 09 with a pause in those expenses while this rate case was pending was reasonable under the circumstances.

2. Pilot boat repair costs.

123. The record demonstrates that $125,316 in maintenance costs for the Pilot Boat Juan de Fuca is an annual expense, not one that should be amortized over five years.[151]

3. Fuel expenses.

124. The difference between the Staff position and that of PSP on pilot boat fuel expenses is that Staff used the most recent 12 months while PSP used the last known price per gallon at the time of the rate filing in June 2022. As explained by Weldon Burton, given the volatility of fuel prices, PSP's approach is more reasonable and should be approved.[152]

4. Legal expenses.

125. The only remaining dispute regarding legal expenses relates to two restating adjustments (R-11 and R-13) and one pro forma adjustment (PS-3). There is no disagreement over the theory of the adjustments, only the amounts.[153]

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[150] Burton, Exh. WTB-8T at 9:5-10:20.
[151] *Id*. at 11:3-15.
[152] *Id*. at 18:1-19:-4.
[153] *Id*. at 19:7-22:10.

5. **Pilot training.**

126. Staff appears to misunderstand the nature of PSP's training expense, which generates expenses every year for a component of the pilot corps.[154] For 2023 and beyond, that expense is consistent with the level of annual training expense set out in the PSP 2023 pro forma.

VI. CONCLUSION.

127. Based upon the comprehensive record in this case, the Commission should approve a tariff funding the Puget Sound pilotage ground that includes nationally competitive net income and benefits, transitions PSP's pension plan to a fully funded defined benefit plan and adopts five automatic adjusters.

DATED this 28th day of April, 2023.

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[154] *Id*. at 27:10-20.