

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-220513

**INITIAL BRIEF OF  
PACIFIC MERCHANT SHIPPING ASSOCIATION**

April 28, 2023

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## I. ISSUES

1 This rate case presents two main issues:

1. The Commission's Final Order in the prior pilotage rate case established a revenue requirement formula based on distributable net income (DNI) and a number of pilots, which is in turn based on an average assignment level (AAL). PSP did not appeal but now advocates for a different framework. Both Staff and PMSA support and rely on the established formula. Should the Commission continue to use the established formula to determine PSP's revenue requirement?
2. PSP seeks to nearly double Total DNI (TDNI) over actual test year pilot net income. PSP bears the burden of showing the current tariff is insufficient to provide an opportunity, given efficient management, to earn a fair return or to attract trainees and retain pilots. The evidence shows no problems attracting and retaining pilots. PMSA and Staff propose much smaller TDNI increases. Has PSP proven a near-doubling of TDNI is fair, just, reasonable, and sufficient?

## II. INTRODUCTION

2 In this general rate case, Puget Sound Pilots (PSP) proposes to essentially double pilots' total net income for nearly the same amount of work. PSP projects a revenue requirement based on 7,443 vessel assignments,<sup>1</sup> for which it requests increases to 56 pilots and \$32,148,872 in TDNI.<sup>2</sup> The 2021 test year for this case had 6,953 assignments completed by 48.33 pilots<sup>3</sup> with total earnings of \$16,397,575 in TDNI.<sup>4</sup> Compared to the test year, the PSP filing seeks a 96-percent increase in total net income.

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<sup>1</sup> PSP Response to Bench Request No. 4; PSP Response to Bench Request No. 1 at Attachment 1, "Updated 2023 PF Revenue" tab, AN:7774.

<sup>2</sup> PSP Response to Bench Request No. 1 at Attachment 1, "BR #1-1 & #2" tab, C:7-11.

<sup>3</sup> Carlson, Exh. IC-14 at "2021" tab, A-D:17.

<sup>4</sup> PSP Response to Bench Request No. 1 at Attachment 1, "BR #1-1 & #2" tab, C:16.

3 PSP's own 2022 performance data shows this request is unreasonable. In 2022, PSP handled 7,482 assignments with 48.5 pilots<sup>5</sup> with earnings of \$17,625,707 in TDNI.<sup>6</sup> So, PSP is proposing a dramatic rate increase in its revenue for doing the same amount of work (actually slightly less) than it completed last year. Adding pilots and doubling TDNI would simultaneously assure each pilot significantly more net income while working less. That is the bottom line behind PSP's proposal: Less Work for More Pay.

4 Standing by the rate-making methodologies and formulae that the Commission established in the initial pilotage rate case for the Puget Sound will avoid this unreasonable outcome.<sup>7</sup> The established methodologies are simple, straightforward, and routine. They are comprehensive and presumptively result in fair, just, reasonable, and sufficient rates.

5 Also of concern is PSP's failure to follow Commission rules and prior orders governing the filing of this general rate case. On this basis alone, rejecting the PSP-proposed tariff as procedurally inadequate is proper. The Commission's final order in this case should also warn PSP that failures to adhere to Commission rules and instructions in future filings will result in dismissals without prejudice.

6 Even if the Commission considers the case on its merits, PSP has failed to carry its burden of proof. This filing is based on untested and unsupported lay opinions, raises novel legal standards and arguments of dubious relevance, is internally

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<sup>5</sup> Carlson, Exh. IC-14 at "2022" tab, A-D:17.

<sup>6</sup> Moore, Exh. MM-80X at 24, B:8 "PSP 2022 Audited Financials".

<sup>7</sup> *WUTC v. Puget Sound Pilots*, Docket TP-190976 (2020).



inconsistent, and ignores incontestable facts. Given these failings, the Commission should conclude that PSP's filing is not substantially justified.

7 If a new tariff is propounded by the Commission, it should be consistent with the Staff and PMSA modifications. The Commission should apply the facts and evidence to the existing formula and methodologies to produce a multi-year tariff consistent with cost-causation principles, ensuring rates for customers that are fair, just, reasonable, and sufficient. PMSA also offers several overarching recommendations for consideration. For example, as discussed in testimony presented by PMSA, the Commission should adopt a new process for addressing pilot boat capital costs, new efficiency-inducing profit-sharing, and new disincentives for the pilotage monopoly to impose unreasonable delays on its customers.<sup>8</sup>

### III. LEGAL STANDARDS

8 The Commission must establish rates which are fair, just, reasonable, and sufficient for the provision of pilotage service.<sup>9</sup> The party that files the revised tariff in a general rate case bears the burden to demonstrate that the current tariff rates are not fair, just, reasonable, and sufficient.<sup>10</sup> As applied to a general rate case, these standards mean rates which are:

**fair** to customers and to the Company's owners; **just** in the sense of being based solely on the record developed in the proceeding following principles of due process of law; **reasonable** in light of the range of possible outcomes supported by the evidence; and **sufficient** to meet

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<sup>8</sup> Moore, Exh. MM-1T at 271-284.

<sup>9</sup> RCW 81.116.020(3).

<sup>10</sup> RCW 81.116.030(5).

the needs of the Company to cover its expenses and attract necessary capital on reasonable terms.<sup>11</sup>

9        These bedrock principles for general rate case standards of review are applied by the Commission to pilotage rate cases.<sup>12</sup> As specifically applied in the pilotage context, the legal standard for sufficiency means “the ability to attract ‘necessary capital on reasonable terms’ relates to PSP’s ability to attract and retain pilots to perform essential pilotage service in the Puget Sound pilotage district.”<sup>13</sup> And the legal standard for fairness means “fair prices based on the monopolies’ cost-of-service.”<sup>14</sup> Once such rates are established, PSP as the pilotage monopoly is bound to provide service to customers within the Puget Sound, and the Commission has created a “regulatory compact.”<sup>15</sup>

10        The Commission has “broad generalized powers in making rate-setting decisions, including substantial discretion in selecting the appropriate rate-making

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<sup>11</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-090704 and UG-090705 (consol.), Order 11, ¶ 18 (2010) (emphasis added).

<sup>12</sup> *Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots*, Docket TP-190976, Order 09, ¶ 43 (2020) [hereinafter TP-190976, Order 09] (citing *WUTC v. Avista Corp., d/b/a Avista Utils.*, Dockets UE-160227 and UG-160228, Order 06 ¶ 79 (2016)).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.* at ¶ 34 (citing The Regulatory Assistance Project, *Electricity Regulation in the US: A Guide* 5 (2011)).

<sup>15</sup> *Id.* at ¶ 36 (citing *Wash. Utils. & Transp. Comm’n v. Puget Sound Power & Light Co.*, Cause No. U-83-84, Order 57-58 (Sept. 28, 1984) (a company “possesses an unending obligation to provide service to anyone within the service territory of that utility who demands service in accordance with approved tariffs.’ In exchange, the Commission provides the utility the opportunity ‘to recover expenses it *prudently* undertakes to meet that obligation.’ By setting rates based on the cost of providing service, the Commission sets ‘an authorized rate of return which represents an *opportunity*, given wise and efficient management, to earn that return.” (emphasis in original)).

methodology.”<sup>16</sup> Accepted methodologies include the use of a hypothetical capital structure for rate-making purposes by the Commission.<sup>17</sup>

11 The Commission has established by regulation the minimum substantive information requirements for filings for pilotage general rate proceedings and retains the right to reject a filing that fails to meet these minimum requirements.<sup>18</sup> These requirements include work papers demonstrating “projected changes in vessel assignments,”<sup>19</sup> “revenues generated by tariff and fees for the test period . . . based on available projected vessel assignments, vessel type, vessel tonnage, routes, number of pilots, or other tariff-based billing determinates,”<sup>20</sup> and if a change in a rate-making methodology is proposed “a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission.”<sup>21</sup>

12 The Commission’s rate-making authority for the Puget Sound pilotage district is limited to the regulation of rates. It is separate and apart from the regulatory authority granted to the Board of Pilotage Commissioners (BPC) for the licensing, training, and discipline of pilots. Specifically, the BPC authority includes the

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<sup>16</sup> *PacifiCorp v. Wash. Utils. & Transp. Comm’n*, 194 Wn. App. 571, 607, 376 P.3d 389 (2016) (citing *US West Commc’ns, Inc. v. Wash. Utils. & Transp. Comm’n*, 134 Wn.2d 74, 86, 949 P.2d 1337 (1997); *People’s Org. for Wash. Energy Res. v. Wash. Utils. & Transp. Comm’n*, 104 Wn.2d 798, 812, 711 P.2d 319 (1985)).

<sup>17</sup> *Id.* at 609.

<sup>18</sup> WAC 480-07-525.

<sup>19</sup> WAC 480-07-525(4)(m).

<sup>20</sup> WAC 480-07-525(4)(q).

<sup>21</sup> WAC 480-07-525(4)(s).

establishment of a pilotage training program<sup>22</sup> and its examinations and applications,<sup>23</sup> setting the number of pilots to be licensed in order “to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district,”<sup>24</sup> and to monitor and regulate pilotage fatigue issues and provide for rest periods.<sup>25</sup>

#### IV. DISCUSSION

**A. The Commission should follow the formula and rate design established in the prior case and only adjust the factors as supported by evidence.**

13 The Final Order in the prior pilotage rate case resulted in a just and reasonable tariff with an opportunity, given efficient management, for PSP to earn a fair and sufficient return. No party appealed that Order. The centerpiece of that Order was the creation of a revenue requirement formula and a rate design. Nothing in the brief time since it became effective justifies departing from that well-considered formula and rate design. With modest adjustments to the factors, this framework will continue to result in a fair, just, reasonable, and sufficient tariff that provides incentives to drive PSP toward more efficient management and will continue to attract and retain pilots to the Puget Sound pilotage district.

14 PSP also has not carried its burden in this case to justify any further changes in the definitions and rate-making methodology for domestic vessels in this case.

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<sup>22</sup> RCW 88.16.035(1)(b)(ii).

<sup>23</sup> RCW 88.16.035(1)(b)(iii).

<sup>24</sup> RCW 88.16.035(1)(d).

<sup>25</sup> RCW 88.16.103; RCW 88.16.035(1)(h).

PMSA supports TOTE's arguments showing that the prior methodology, which has been in place for decades, should be maintained under any future tariff.

**1. The Commission should reject PSP's proposed increase in DNI as unsupported. Only a modest increase is supported.**

15 PSP's proposed increase in DNI to \$574,087 is excessive, unfair to customers, and not supported by the evidence. Furthermore, the legal theories and arguments underlying the PSP request are both substantively and procedurally deficient.

**a. The existing rate is more than sufficient to attract and retain pilots in the Puget Sound.**

16 The legal standard of "sufficiency" requires examining whether the tariff is capable of generating a level of compensation that will support "PSP's ability to attract and retain pilots to perform essential pilotage service in the Puget Sound pilotage district."<sup>26</sup> In 2020, during the onset of the COVID pandemic, the net income per pilot in the Puget Sound pilotage district fell to \$204,580, which was by far the lowest net income per pilot in the Puget Sound in over a decade.<sup>27</sup> But, despite the historically low pilot net income, more new applicants turned out for the next examination, and existing pilots did not retire in droves.<sup>28</sup> PSP has not alleged any retention issues, much less produced evidence of any pilot ever leaving Puget Sound mid-career for another pilotage ground, even with a historically low net income.

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<sup>26</sup> TP-190976, Order 09 at ¶ 43.

<sup>27</sup> In the prior 10 years the lowest net income per pilot in the Puget Sound had been \$348,609 in 2011. Moore, Exh. MM-3; TP-190976, Moore, Exh. MM-24.

<sup>28</sup> Moore, Exh. MM-1T at 116:18-19.

17 The test year, 2021, was the first full calendar year of pilotage provided under the initial Commission-approved tariff structure and rate-making methodology. The BPC held a pilotage examination in April 2021.<sup>29</sup> Applicants most likely knew at the time they applied for the examination that the PSP pilots' DNI was the historically low \$204,580. And yet, the total number of applications was the second highest it has been since 1996.<sup>30</sup> It is reasonable to conclude that the attractiveness of pilotage in Puget Sound was maintained or increased in 2021. To date, BPC maintains a waiting list of potential trainees: there are more applicants than spots available.<sup>31</sup> And, just as in the prior rate case,<sup>31</sup> once a pilot has been licensed in the Puget Sound, post-licensing transfers are exceedingly rare.<sup>32</sup> PSP has presented no evidence to the contrary.

18 Projections of even further increases in the number of licensees, up to 56 licensees over the next few years, only confirm the attractiveness of the current DNI, even though adding more pilots results in a lower DNI per pilot. But neither this projection or the historically low DNI in 2020 produced any attrition or decline in interest from potential applicants to the training program.

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<sup>29</sup> Moore, Exh. MM-1T at 88:13.

<sup>30</sup> *Id.* at 88:14.

<sup>31</sup> *Id.* at 20:20-23, 87:2-6.

<sup>32</sup> TP-190976, Order 09 at ¶ 155 (“Once pilots are licensed in Puget Sound, the evidence overwhelmingly shows that they stay for the duration of their careers”).

**b. PSP’s proposed comparability analysis is neither necessary nor reasonable.**

19           Considering whether a proposed pilotage rate is fair requires examining whether the tariff establishes “fair prices based on the monopolies’ cost-of-service.”<sup>33</sup> Likewise, considering whether a proposed pilotage rate is reasonable requires “setting a reasonable rate of return that encourages prudent decision-making in monopoly enterprises.”<sup>34</sup> In this case, PSP is requesting an increase in DNI from the test year \$295,616 to \$574,087.<sup>35</sup> PSP bases this request on an evaluation of national pilot income comparability by its compensation consultant David Lough. PSP attempts to justify using national comparability by claiming (1) a need to draw from a “national pool”<sup>36</sup> and (2) that pay in “Seattle metropolitan area exceeds nationwide market averages by about 10%.”<sup>37</sup> Both claims fail upon even the most rudimentary examination of the actual facts and evidence.

20           In fact, a large pool of talented local mariners form the applicant pool for PSP.<sup>38</sup> In describing compensation of maritime workers, Mr. Lough relied on statistics from the Bureau of Labor Statistics (BLS).<sup>39</sup> But on cross examination he admitted that the BLS statistics specific to the Seattle area in no way support an assertion that Seattle area mariners exceed the national average in pay by 10 percent.<sup>40</sup> In

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<sup>33</sup> *Id.* at ¶ 34.

<sup>34</sup> *Id.* at ¶ 39.

<sup>35</sup> Lough, Exh. DL-25T at 6-7.

<sup>36</sup> Lough, Exh. DL-01T at 23:9.

<sup>37</sup> *Id.* at 2:14-15.

<sup>38</sup> Moore, Exh. MM-1T at 101:3-8.

<sup>39</sup> Lough, Exh. DL-01T at 5.

<sup>40</sup> Lough, TR. at 505:14-19.

fact, this area did not even make the nation's top ten list for pay at all.<sup>41</sup> Upon further inquiry it actually was made clear that Mr. Lough conducted no independent research at all: in fact all the data for his comparability analysis was selected by PSP and provided to him by PSP.<sup>42</sup>

21 Even if Mr. Lough's testimony had been thorough, independent, and supported by more than extremely limited evidence, pilot income comparability is not a formula factor, nor a legal standard. As the Commission explained in the prior rate case, any argument based on comparability to other pilotage districts must "at a minimum" be supported by "financial statements for each of the pilot associations included in its comparability analysis."<sup>43</sup> PSP has not provided even that minimum level of support.

22 If PSP had first proven the current tariff as insufficient to attract and retain pilots, then perhaps a comparability analysis with financial statements could assist the Commission in evaluating the tariff. But here, where PSP is successfully attracting and retaining pilots under the current tariff, the Commission need not consider pilot income comparability and all the complexities a sound comparability analysis would require. PSP has not made an effective argument for why such an analysis is relevant and why a departure from the Commission's established rate-making methodology is necessary or reasonable.

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<sup>41</sup> Moore, Exh. MM-33 at 6.

<sup>42</sup> Lough, TR. at 476:9-12.

<sup>43</sup> TP-190976, Order 09 at ¶ 149.



**c. Application of the existing Commission-adopted rate-making methodology is more appropriate than application of the prior rate case DNI.**

23 The Commission in the initial rate case adopted a rate-making methodology for pilot DNI which is, by design, presumptively fair, just, and reasonable when it is applied. As applied by PMSA, the formula would generate modest increases in DNI that are fair, just, and reasonable: \$346,391 in Year 1, \$357,475 in Year 2, and \$368,914 in Year 3.<sup>44</sup>

24 PSP has not provided any evidence, much less carried its burden of proof, to support an argument that the current rate-making methodology should be abandoned, or that its application results in rates which are not fair, just, and reasonable.

25 The Staff recommendation, which continues the result of the application of the DNI formula adopted by the Commission in the prior rate case,<sup>45</sup> should not be adopted. Acting consistently with the Commission's adopted formula from the prior rate case is different from continuing the outcome of the application of the prior rate case. The prior case's facts are not this case's facts, and when this case's facts are applied to the formula, they result in different outcomes. While PMSA agrees with Staff that the DNI from Order 09 is presumptively fair, just, reasonable, and

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<sup>44</sup> Moore, Exh. MM-1T at 17:13-18.

<sup>45</sup> Young, Exh. MY-9.

sufficient, those formula inputs are not in evidence in this case, so simply leaving the prior case's rate of income in place here is improper.<sup>46</sup>

**2. The Commission should assess the number of pilots based on the average assignment level (AAL) formula and the evidence in this case, not PSP's unsubstantiated guess.**

26 PSP's proposed use of 56 pilots to determine TDNI should be rejected. The proposal is an unsubstantiated guess that has already proven inaccurate since PSP's initial filing. The Commission should instead rely on the AAL formula it adopted as the preferred methodology in the prior rate case. To the extent PSP offers its opinion as a substitution for a formula, such a change in rate-making methodology should be viewed with skepticism: PSP has an incentive to ask the Commission to authorize a TDNI based on a number of pilots that is higher than the actual number as this will produce more revenue than necessary or sufficient. And when, as here, the PSP estimate is not based on the evidence, it is patently unjust.

27 Though Staff did not object to the PSP request for 56 pilots, that is also not based on the AAL methodology. In any event, it applied data that is anomalous and

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<sup>46</sup> *PacifiCorp v. Wash. Utils. & Transp. Comm'n*, 194 Wn. App. at 610 (citing *Wash. Utils. & Transp. Comm'n v. Puget Sound Energy*, Dockets UE 121697/UG 121705 (consol.), Order 11 at ¶¶ 2, 4, 5 (Oct. 24, 2014)) (“In *Puget Sound Energy*, ‘The Court determined however that the Commission, having expressed the point that ‘the record on the issue [of return on equity] in this case lacks the depth and breadth of data analysis, and the diversity of expert evaluation and opinion on which the Commission customarily relies in setting return on equity,’ should not have left the previously approved rate of return on equity in place and should instead have required the submission of additional evidence.’”).

inconsistent with Staff adjustments to the test year. The better practice is to simply calculate a number of pilots using the Commission-approved multi-year AAL.

**a. PSP’s guess at the number of pilots is facially unreliable and would provide a windfall income if adopted.**

28 When PSP submitted its initial filing in this general rate case on June 29, 2022, the filing was accompanied by a “Motion to Set Expedited Schedule” and a “Petition for Interim Rate Relief and Request for Expedited Consideration.” At the time of these filings there were 53 licensed pilots.

29 Relying on the testimony of Capt. Bendixen, the PSP motion for an expedited schedule guessed that by January 2023 PSP would have 56 pilots. This was based on the claim that there were “two current trainees who are expected to be licensed at the next BPC meeting on July 19 that will raise the number of pilots to 55” and that, “[a]s Captain Bendixen testifies, by the January 25, 2023 anniversary of the current tariff, PSP expects to be fully staffed to the 56-strong pilot corps approved by the BPC.”<sup>47</sup> In its petition for interim rate relief, PSP likewise asserted it would soon have 56 pilot licensees: “BPC recently licensed a 53rd pilot,” “is poised to license two more . . . on July 19,” and “will license one additional pilot during the pendency of [this] case . . . .”<sup>48</sup>

30 Just one month later, PSP’s predictions were already inaccurate. And, to date, they have remained inaccurate. While PSP was predicting that after the July 19,

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<sup>47</sup> PSP Motion at ¶ 11.

<sup>48</sup> PSP Petition at ¶ 4. *See also id.* at ¶ 14 (“The current tariff assumes (and funds) just 52 full-time pilots. PSP currently has 53 licensed member pilots and that number is soon to increase to 56.”).

2022 BPC meeting there would be 55 pilots, there were still only 53 as of August 1, 2022.<sup>49</sup> As of October 1 and December 15, 2022, the number remained unchanged at 53 pilots.<sup>50</sup> And, as of February 28, 2023, PSP bought insurance policies for only 53 licensed pilots.<sup>51</sup>

31 The only document claiming the existence of 56 pilots is PSP's 2022 Audited Financial Statement.<sup>52</sup> But when pressed to explain why the number of pilots listed in the pilot financials differed from the number of licensees, PSP's auditor could not explain the discrepancy but admitted the three additional pilots were possibly not licensed pilots and instead retired pilots who were "burning" comp days under the PSP By-Laws.<sup>53</sup>

32 PSP's petition and supporting documents use various and inconsistent numbers of pilots for the test year, including 48.33 pilots, 49.14 pilots, 52 pilots, and 52.9 pilots.<sup>54</sup> When presented with these inconsistencies, PSP's President found the difference between 48.33 pilots and 52 pilots "insignificant."<sup>55</sup> Regarding these inconsistencies, such as the nine-percent difference between the number of pilots used for the distribution of revenues and the number of pilots necessary to complete

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<sup>49</sup> Royer, Exh. JR-3 at 17.

<sup>50</sup> Bendixen, Exh. SB-15X at 6 (as of Oct. 1, 2022); Burton, Exh. WTB-20X (as of Dec. 15, 2022).

<sup>51</sup> McCarthy, Exh. SM-15X.

<sup>52</sup> Moore, Exh. MM-80X at 24-27.

<sup>53</sup> Norris, TR. at 788:10 – 789:18.

<sup>54</sup> Carlson, TR. at 339:12 – 341:20.

<sup>55</sup> *Id.*

pilot workloads, he commented that “the working pilot roster includes pilots that no longer hold a license but are burning comp days.”<sup>56</sup>

33 The lack of consistency in accounting for the number of pilots, and PSP’s indifference to a discrepancy as large as nine percent for the test year, compounds the inaccuracy of even the most near-term and potentially most-well informed estimates by PSP as to the number of future pilots. These deficiencies make clear that the Commission should retain its formula for rate making and not default to any PSP guess of a future number of potential pilots as a substitute for its formula.

34 Additionally, the Commission should be naturally skeptical and provide heightened scrutiny to any PSP proposal using a number higher than the actual number of licensed pilots or a number otherwise deviating from the Commission’s AAL methodology. Because DNI is multiplied by the number of pilots, PSP will always have an incentive to inflate estimates about the number of future pilots. This incentive is especially powerful when PSP does not actually intend to fill the positions funded: in such a situation the tariff would yield windfall revenues for PSP. Such windfalls would occur if, for example, the tariff were set at 56 pilots when no more than 53 pilots were licensed over the same period PSP claimed 56 pilots were to be licensed.

35 The Commission formula expressly controlled for precisely this type of scenario in the prior rate case.<sup>57</sup> In that case, such as here, PSP made claims about funding

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<sup>56</sup> *Id.*

<sup>57</sup> TP-190976, Order 09 at ¶ 88.

future pilots but did not provide the Commission with “evidence that the BPC will authorize additional pilots,” and therefore, “PSP’s proposed adjustment does not reflect a known and measurable expense. This instead reflects a proposed long-term plan for investment, which should not be included in rates until the investments are actually made.”<sup>58</sup> The Commission ultimately resolved this issue by finding that “Staff’s proposal avoids this issue by basing rates on historical, average assignment levels.”<sup>59</sup> Using this same methodology would avoid the issue here just as it did in the prior rate case.

**b. PSP’s own evidence makes the best case for why adopting PSP’s proposed number of pilots is unreasonable.**

36 The Commission need not rely on hypotheticals, guesses, or estimates for the number of pilots needed to safely perform the 7,443-assignment projection at the heart of PSP’s filing because PSP has already submitted the actual workloads completed for 2022. PSP used 48.5 pilots to work 7,482 assignments in 2022.<sup>60</sup> This slightly higher number of assignments resulted in an average assignment level of 154.3 per pilot in 2022.

37 Of course, more than 48.5 pilots were licensed in 2022. Based on PSP’s financials, the average number of licensed pilots in 2022 was 52.5.<sup>61</sup> So PSP’s own evidence shows that either 48.5 pilots or 52.5 pilots were able to safely complete

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> Carlson, Exh. IC-14 at B:17. *Compare* Carlson, Exh. IC-15, at L:26 (testifying that in 2022 PSP had “Total Assignments” of 7,843).

<sup>61</sup> Moore, Exh. MM-80X at 24, A:2.

7,482 assignments in 2022. PSP presented no evidence explaining why it needs 56 pilots to perform fewer assignments going forward.

38 Finally, if 52.5 licensed pilots completed 7,482 assignments, but one of those pilots was the PSP President, the 51.5 working pilots completed an average assignment level of 145.2 assignments per pilot in 2022. This is remarkably close to the Average Assignment Level adopted in the prior rate case where the Commission “adopt[ed] Staff’s proposed average assignment level of 143.4 for the purpose of rate-setting and reject[ed] PSP’s proposal for a lower average assignment level of 118.”<sup>62</sup> In short, the evidence does not support funding 56 pilots.

**c. Applying the existing AAL generates a fair and reasonable number of pilots.**

39 Rather than relying on guesses or just the data from one year, this case would benefit from an application of the five-year AAL adopted in the prior rate case. That methodology eliminates year-to-year variations and anomalies by smoothing out marketplace changes and business cycle impacts on the number of assignments. As described by Staff, the AAL reflects the prior five years of BPC Annual Report data regarding annual pilotage assignments.<sup>63</sup> This in turn generates an acceptable range of fair, just, and reasonable outcomes between the actual number of pilots, which acts as a floor, and the approved number of licenses available for potential pilots, which acts as a ceiling.<sup>64</sup>

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<sup>62</sup> TP-190976, Order 09 at ¶ 85.

<sup>63</sup> Moore, Exh. MM-6 (citing TP-190976, Sevall, Exh. SS-1T at 7:11-20, 9:15-19).

<sup>64</sup> *Id.* (citing TP-190976, Sevall, Exh. SS-1T at 10:17-11:2).

40 PMSA proposes to follow the existing Commission rate-making methodology in this case and provided a worksheet detailing its calculations, which resulted in 54.9 pilots based on an 2018–2022 AAL of 138.9 per pilot.<sup>65</sup> In contrast, PSP has not provided any AAL calculations in testimony or in any of the required work papers,<sup>66</sup> and PSP has not shown how its new calculations would differ from the methodology adopted in the prior rate case.

**d. Staff’s acquiescence to PSP’s proposed number of pilots is not a compelling basis for deviation from the AAL formula.**

41 Staff did not propose its own number of pilots but instead offered no objection to PSP’s projection because it calculated 56.8 pilots based on 2021 test year pilot workloads.<sup>67</sup> The Commission should not modify its application of the formula, as Staff’s calculations do not validate PSP’s guesses regarding the number of pilots.

42 First, using 2021, Staff finds that 52 pilots completed 6,953 assignments, an average assignment level of 133.7 assignments per pilot.<sup>68</sup> If this assignment level were applied straight to the 2022 pilotage assignment level of 7,443, the result is 55.7 pilots, not 56.8.

43 Second, the single test year of 2021 is not a good gauge as it contained anomalous data, which is why PSP removed the 2021 cruise season from its pro forma and replaced it with a “normal” cruise season data set.<sup>69</sup> As described in

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<sup>65</sup> *Id.*

<sup>66</sup> WAC 480-07-525(4)(s).

<sup>67</sup> Staff Response to Bench Request No. 12 at Attachment 3, “12-month P&L” tab, Q:125-130.

<sup>68</sup> *Id.* at “12-month P&L” tab, Q:118-120.

<sup>69</sup> *Id.* at “Staff Adjustments” tab, E:30. *See also* Young, Exh. MY-3.



PSP’s testimony, “[w]hile cruise ships have returned to a normal, pre-pandemic schedule, 2021 experienced an extremely low number of cruise ships in Seattle . . . and a pro forma adjustment was made to include more representative (normal) cruise ship seas revenue.”<sup>70</sup> The PSP Statement of Operations shows that, in contrast to the 225 cruise ship assignments handled by PSP in 2021,<sup>71</sup> PSP expected 592 cruise ship assignments in 2022 when it filed its pro forma.<sup>72</sup> Using the adjusted test year as a basis for projections of the number of pilots would thus require including these additional 367 assignments in the test year. As adjusted, this would result in 52 pilots working 7,320 assignments, or an average assignment level of 140.8 per pilot. If Staff had applied this adjusted AAL of 140.8 per pilot to the 2022 pilotage assignment level of 7,443, then the result is 52.9 pilots, not 56.8.

44 Whether the result is 52.9 or 55.7, the Staff testimony should not be construed to support the PSP proposal of 56 pilots because the PSP proposal is based on a guess that represents an unnecessary departure from the AAL methodology. Using the Commission’s approved AAL methodology in this case cures both these issues.

**3. The Commission should treat medical insurance as individual expenses given pilots’ independent contractor status.**

45 The Commission decided “[i]t is fair, just, and reasonable for [pilot] independent contractors to transition to paying for medical coverage through their DNI rather than PSP paying that expense on the pilots’ behalf from PSP’s organizational

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<sup>70</sup> Burton, Exh. WTB-04T at 8:1-12.

<sup>71</sup> Burton, Exh. WTB-05 at “2021 Cruise Rev” tab, A:9-233.

<sup>72</sup> *Id.* at “2022 Cruise Rev” tab, C:16, 27.

operating expenses.”<sup>73</sup> Thus the Commission directed PSP to begin a three-year transition where in the first year PSP would “include the full value of pilot medical insurance expense . . . as an operating expense”; in the second PSP would include 50 percent of the value in PSP’s revenue requirement; and in the third PSP would fully fund their medical expenses from the compensation received through the DNI.”<sup>74</sup>

The Commission decided that PSP’s “organizational structure militates against any expectation that PSP should provide medical insurance for member pilots”<sup>75</sup> as PSP’s pilots are independent contractors, not employees or partners in a legal partnership.<sup>76</sup>

46        Despite this reasoned decision, which PSP did not appeal, PSP now seeks “reconsideration” on this point based on “new evidence.”<sup>77</sup> But, this “new evidence” consists only of (1) Chief Mate Alysia Johnson’s observation that one company other than PSP offers health insurance through a union to its employees; (2) David Lough’s table of pilot income and benefits in other pilotage grounds in Exhibit DL-6; and (3) Mr. Burton’s observation about other entities he has worked with that have medical plans.<sup>78</sup> None of this supports reconsidering the Commission’s three-year transition of medical expenses to funding pilot medical expenses through DNI.

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<sup>73</sup> TP-190976, Order 09 at ¶ 253.

<sup>74</sup> *Id.* at ¶ 254.

<sup>75</sup> *Id.* at ¶ 250.

<sup>76</sup> *Id.* at ¶ 253.

<sup>77</sup> Burton, Exh. WTB-04T at 10:9-11.

<sup>78</sup> *Id.* at 10:12-17.

47 Ms. Johnson’s union employee observation ignores the fact that PSP member pilots are neither union members nor (as the Commission already found in Order 09) employees. And, in any event, the Commission has already recognized that employees’ health insurance through a union is an appropriate expense, as when PSP itself pays for medical insurance for its non-pilot staff under a collective bargaining agreement, an expense already included in the revenue requirement.<sup>79</sup> This is not “new evidence” warranting a reconsideration of the Commission’s decision.

48 Mr. Lough’s testimony that different pilotage grounds treat benefits, including medical insurance, differently is also not “new evidence.” PSP already presented this type of evidence in the prior rate case, where PSP “examined” benefits and either “added the expense of those benefits to the net income where PSP does not receive the same benefits or subtracted them from income” in order to make adjustments for comparability.<sup>80</sup> As Mr. Lough’s testimony also merely confirms what was already discussed in the prior case, it also is not grounds for reconsideration.

49 Finally, Mr. Burton offers his observation that entities he has worked with “have provided medical insurance coverage for working owners/operators which was paid

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<sup>79</sup> TP-190976, Order 09 at ¶¶ 249, 253.

<sup>80</sup> TP-190976, Carlson, Exh. IC-1T at 8:1-9.

by the company and included in the rate calculation.”<sup>81</sup> This is also not “new evidence,” as he himself made the same argument in the prior case.<sup>82</sup>

50 PSP presents no basis for the Commission to even reconsider its position on medical benefits, much less change it upon reconsideration. Staff’s testimony summed this up well; when asked to describe what evidence was provided by PSP to support the reconsideration of including these costs as expenses, the answer was “[n]ot much of anything, despite Staff’s request for information through data requests.”<sup>83</sup> Staff observes that pilots function as independent contractors and thus “should provide their own health insurance,” and medical benefits “should be removed from the revenue requirement.”<sup>84</sup> PMSA and Staff agree that the Commission should continue the current treatment of medical insurance with respect to the removal of these expenses from PSP’s revenue requirement: these costs should be treated as individual costs.<sup>85</sup>

51 While both PMSA and Staff support a continuation of the Commission treatment of pilot medical insurance as a funded by pilot DNI from the prior case, Staff proposes to deviate from the prior Commission order in one respect: Staff proposes to include pilot medical insurance as an additional amount added to its proposed

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<sup>81</sup> Burton, Exh. WTB-04T at 10:19-20.

<sup>82</sup> TP-190976, Order 09 at ¶ 247 (noting Mr. Burton’s testimony “compare[d] the pilots to owners who work for their companies and receive employee benefits”).

<sup>83</sup> Young, Exh. MY-1T at 23:10-12.

<sup>84</sup> *Id.* at 23:17-24:8.

<sup>85</sup> Young, Exh. MY-11T at 8:19 (citing Moore, Exh. MM-1T at 35:25) (“PMSA’s view matches that of Staff for this item.”).

DNI.<sup>86</sup> Thus Staff proposes to add 100 percent of PSP’s proposed medical expense of \$1,885,345 into DNI. This would increase the total revenue requirement by an unjustified \$942,672.50 windfall, the amount excluded from revenue in the second year of 50-percent transitional step under Order 09. PMSA emphatically agrees with Staff that this should not be an expense but nonetheless disagrees that the Commission should further increase DNI as a result. If the Commission nevertheless decides to reconsider this point, it should at least continue the existing treatment of medical insurance as directed in Order 09 for the second year, i.e., to allow no more than 50 percent of medical premiums to be included in the pilot DNI.

**4. The Commission should adopt PMSA’s reasonable increase in TDNI based on the established formula, not PSP’s facially unreasonable doubling of TDNI without any additional workload.**

52 PSP seeks to double take-home compensation for doing the same amount of total work. PSP proposes to increase TDNI by 96 percent:<sup>87</sup>

Bench Request #1-1				
Requested				
Revenue Requirement Formula				
Proposed Rebuttal DNI	574,087	source: Exh. DL-25T 6:15-16	<b>Difference between</b>	
# of pilots	56		<b>Authorized and Requested</b>	
Proposed TDNI	32,148,872		10,824,989	33.67%
Pro Forma Expenses (Inc Depr & Int)	18,358,529	source: Results of Operations, cell I74	3,365,453	18.33%
Proposed Rebuttal RR	50,507,401			
BR #2-1 & BR #2-2				
Actual (2021 Test Year)				
Test Year Actual TDNI	16,397,575	source: Results of Operations, cell E77	15,751,297	96.06%
Cruise Revenue Adjustment	3,457,932	remove 2021 cruise revenue & add 2022 cruise revenue		
Test Year Expenses (Inc Depr & Int)	15,700,095	source: Results of Operations, cell E74	2,658,434	16.93%
<b>Test Year Revenue</b>	<b>35,555,602</b>			
<b>Additional Annual Revenue</b>	<b>14,951,800</b>			

<sup>86</sup> *Id.* at 24:6-8.

<sup>87</sup> PSP Responses to Bench Request Nos. 1 and 2 at Attachment 1, “BR #1-1 & #2” tab, B:3-F:21.

53 At the same time, assuming the Commission accepts PSP’s vessel assignment projection at face value,<sup>88</sup> PSP’s vessel assignment projection for the tariff change is 7,443.<sup>89</sup> This is only 1.7 percent more than the adjusted total number of assignments PSP completed in the 2021 test year.<sup>90</sup> Since PSP adjusted the 2021 test year to remove 225 cruise ship assignments and replaced them with the 592 cruise ship assignments to account for the anomalous 2021 cruise season, the 2021 adjusted test year assignment total is 7,320 assignments.<sup>91</sup> The PSP-proposed 7,443 vessel assignment projection for its revenue requirement in this tariff is only an increase of 1.7 percent over the adjusted 2021 test year number of vessel assignments. PSP’s view, therefore, is that projected vessel traffic which is nearly identical to test year vessel traffic should generate double the net income for pilots.

54 This is unreasonable because the Commission sets rates “at a level designed to recover the revenue requirement based on sales. In the case of marine pilotage services, historic and projected vessel traffic reflects the sales at issue.”<sup>92</sup> The “ultimate goal” is that rates are “*reasonable* in light of the range of possible outcomes supported by the evidence.”<sup>93</sup> This is guided by “[t]he fundamental economic goal” of “mimic[king] a competitive market outcome, even when the

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<sup>88</sup> See *infra*, ¶ 87.

<sup>89</sup> PSP Response to Bench Request No. 4. at Attachment 1, “Updated 2023 PF Revenue” tab, AN:7774.

<sup>90</sup> Carlson, Exh. IC-14 at “2021” tab, B:17.

<sup>91</sup> Burton, Exh. WTB-05 at “2021 Cruise Rev” tab, A:9-233 *and* “2022 Cruise Rev” tab, C:16, 27.

<sup>92</sup> TP-190976, Order 09 at ¶ 58.

<sup>93</sup> TP-190976, Order 09 at ¶ 43 (emphasis in original).

underlying market is not competitive.’ The Commission seeks this efficient outcome by setting a reasonable rate of return that encourages prudent decision-making in monopoly enterprises.”<sup>94</sup> It follows that, where sales, reflected by vessel traffic, do not substantially change, the revenue requirement should not substantially change. Application of this standard dictates that when demand is not growing, and sales for a business in a competitive marketplace are flat, revenues would also not grow precipitously. This standard does not support PSP’s request to double net income in exchange for an essentially flat 1.7 percent increase in vessel traffic.

55        Similarly, DNI should reflect actual work completed (vessel assignments) and overall profitability of a partner/owner (net income after expenses). In a competitive marketplace, DNI would likewise only grow apace with market demand. PSP’s proposal for higher DNI in the context of flat sales defies fundamental rate-setting principles. It also runs counter to two other important factors in PSP’s proposal: a 16.9-percent increase in overall expenses<sup>95</sup> and a 5.9-percent increase in equity partner/owners.<sup>96</sup> PSP’s own compensation expert agreed that lower net revenues result where an organization (1) grows expenses faster than revenues or (2) brings in new owners or partners faster than it grows revenue.<sup>97</sup> PSP cannot reasonably

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<sup>94</sup> TP-190976, Order 09 at ¶ 39.

<sup>95</sup> PSP Responses to Bench Request Nos. 1-5 at Attachment 1, “BR #1-1 & #2” tab, C:10 C-F:18 (PSP’s pro-forma expenses of \$18.3 million compared to \$15.7 million in the 2021 test year = \$2.6 million increase in expenses).

<sup>96</sup> Norris, Exh. JJN-02 at 23 A:2 (PSP’s proposal to fund 56 pilots is an increase of 3.1 pilot licensees over the average of 52.9 in the 2021 test year).

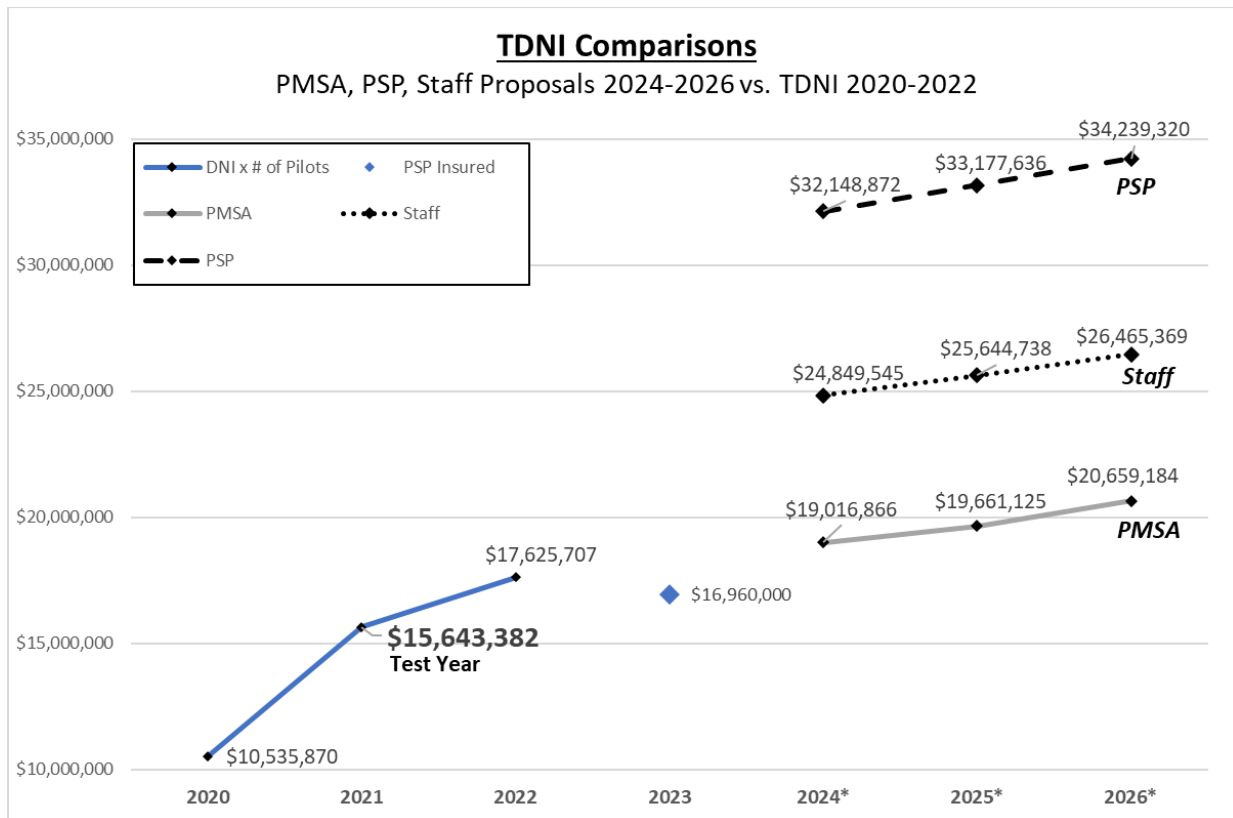
<sup>97</sup> Lough, TR. at 470:22 – 471:14.

expect this rate-setting process to render an opposite result to what would occur in a competitive marketplace.

56 In contrast to PSP's requests, PMSA employs the Commission's existing rate-setting methodology and formula based on sales as reflected in vessel traffic. PMSA's recommendation obeys the mathematical reality that adding pilots and expenses when sales are flat will necessarily result in lower net income per pilot. As each pilot works less, each pilot earns less revenue. When per-pilot expenses grow faster than revenue, each pilot earns less revenue. These are immutable relationships that work in the inverse as well: the less PSP spends on expenses per pilot, the higher the net income per pilot, and if each pilot works more, each pilot earns more revenue. PMSA's recommendation for TDNI of \$19.0 million represents a 21.8-percent increase over the test year 2021 TDNI of \$15.6 million. This recommendation is based on DNI and AAL calculations in the Commission's 5-year average formula. These are averages which mute the impacts of single year issues, including where no significant increase in vessel assignments is projected. Using multi-year averages in this way protects both ratepayers and PSP as spikes and valleys that might otherwise create windfall benefits or unfair costs get smoothed out over time.

57 The chart below shows the TDNI options presented by PSP, Staff, and PMSA. It graphically reaffirms that, in light of recent historical TDNI, PMSA's 21.8-percent increase is the most reasonable. The underlying data, assumptions, and sources for this chart are set forth in the attachment to this brief.





**5. The Commission should approve only those operating expenses that are reasonably necessary for the provision of the pilotage service.**

58 PSP needs to have a tariff that covers the reasonable costs of running the pilotage service. Many of PSP’s operating and capital expenses are reasonable and should be recaptured in rates paid by PSP customers. But various specific PSP proposals for new treatment of its costs and expenses in this rate case are unwarranted, unnecessary, and inconsistent with fundamental rate-setting principles. The Commission should generally continue the approaches to these expenses that it adopted in the prior rate case.

59 PMSA provided extensive opinion and fact testimony regarding expenses in its testimony. In this, it was mindful of the Commission’s advice in Order 09 that “[i]n the future, PMSA is encouraged to make detailed arguments, like those Staff makes

in its testimony, explaining why a particular expense should or should not be included in the revenue requirement.”<sup>98</sup> This briefing will not attempt to summarize or restate the facts and opinions of PMSA for each expense item as those are presented in detail in the testimony of Capt. Moore. PMSA also leaves to testimony its agreement with Staff regarding most of PSP’s expenses.<sup>99</sup> Below, we instead focus on areas of significant disagreement among the parties.

**a. PSP’s 53% increase in spending since 2018 is unreasonable and unnecessary since PSP is providing roughly the same level of service with the same size labor force to its customers.**

60 PMSA’s specific comments on PSP expenses are made in a larger context, and that is our increasing concern regarding the lack of PSP expense management generally. From 2018 to 2022 PSP expenses have grown 53.48 percent while PSP provides service to roughly the same number of vessel assignments and has roughly the same size labor force.<sup>100</sup> Given PSP’s dramatic spending increase, the Commission should consider incentives for PSP to manage its costs and be mindful of the rapid growth of spending categories that are merely a secondary distribution of indirect income or deferred compensation to pilots. These spending categories now constitute an overwhelming majority of PSP expenses, including transportation and retirement.

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<sup>98</sup> TP-190976, Order 09 at ¶ 330.

<sup>99</sup> See, e.g., Moore, Exh. MM-1T at 39; Moore, Exh. MM-63T at 19:1–20:5, 26:13–27:7.

<sup>100</sup> Moore, Exh. MM-1T at 22:1-24:22 (see Figure A, Figure B).

**b. Transportation costs should continue to be limited to the historic methodology and not include payments to pilots for commuting to jobs.**

61 As in the prior rate case, the Commission should continue the longstanding practice of charging for transportation costs based only on the taxi fare to a job from PSP's Seattle or Port Angeles pilot offices and should exclude all costs of pilots commuting to and from their homes.<sup>101</sup>

62 In the prior rate case, Staff pointed out that transportation expenses should be treated "similar to allowances provided by the Internal Revenue Code in relation to the deduction of travel costs for tax purposes."<sup>102</sup> PSP has not addressed the issue of commute costs or questions of consistency with the Internal Revenue Code.

63 It is well-settled law that the inclusion of pilots' commute costs to and from the locations at which they work are inconsistent with IRS rules.<sup>103</sup> A pilot's "place of employment was the area in which were located the various docks and wharves to which he was subject to being assigned and that cost of travel from his residence to any point of assignment and return constituted commuting expense."<sup>104</sup> Even though "this was a large area and involved over 100 possible points of assignment," a pilot's "costs of travel from his residence to any point of assignment and return cannot, in our opinion, properly be considered as expenses paid or incurred in the carrying on of his trade or business. Rather they were personal expenses incurred in

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<sup>101</sup> TP-190976, Order 09 at ¶¶ 268-270, 273.

<sup>102</sup> TP-190976, LaRue, Exh. AMCL-15X.

<sup>103</sup> *Heuer v. Comm'r of Internal Revenue*, 32 T.C. 947 (1959); *Steinhort v. Comm'r of Internal Revenue*, 335 F.2d 496 (5th Cir. 1964).

<sup>104</sup> *Heuer* at 952.

traveling to and from the site of his work.”<sup>105</sup> By contrast, expenses that are “attributable to traveling from one assignment to another” or “from points of assignment to ship destinations” are deductible.<sup>106</sup> Thus, the costs of commuting from a pilot’s home directly to a vessel or returning home from a vessel are disallowed, but the costs from the PSP office as a point of dispatch to a ship or between ship assignments are allowable.

64           The pilotage tariff transportation charges that have been based on taxi fares to and from the pilot office for nearly 60 years are consistent with the law, are not controversial, are stable charges, and are easy to administer. The Commission found in the prior rate case that PSP had not made a compelling case for a change from the historic methodology, and that remains the current methodology. PSP makes even less of an effort to compile a compelling case here than it did in the prior case. The existing charge methodology should once again be retained, and pilotage commute costs should once again be disallowed.

**c. PSP legal spending once again appears excessive, but the lack of disclosure of costs by PSP impedes developing specific adjustment amounts.**

65           As with overall expenses, PSP’s overall legal spending has ballooned by over 350 percent since 2016—not just with the addition of new costs specific to new UTC authority but generally as well. In the prior rate case, PMSA could only make general comments on the nature of this legal spending and could not make specific

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<sup>105</sup> *Id.*

<sup>106</sup> *Id.* at 953.

recommendations on adjustments.<sup>107</sup> The Commission nonetheless noted “that PSP’s general legal fees have rapidly increased in recent years,” and “shared PMSA’s concern” regarding potential over-utilization of attorneys for non-legal issues, but it had “insufficient evidence regarding the nature of PSP’s legal expenses or the matters its lawyers are pursuing.”<sup>108</sup>

66 PMSA’s testimony again in this case includes significant concerns regarding the question of whether ratepayers are paying the cost of PSP’s over-reliance on attorneys for matters for which no legal representation is required.<sup>109</sup>

Unfortunately, PMSA is also once again unable to recommend specific adjustments to legal fees. When asked to provide the billing details that might justify whether its attorneys’ costs were prudently incurred and responsibly managed, PSP yielded no transparency into these matters.<sup>110</sup>

67 Noting the concerns posed by rapid increases in PSP legal fees, the Commission warned PSP that it “may limit recovery of excessive legal or expert witness fees when the evidence establishes that certain expenses are unreasonable or unnecessary.”<sup>111</sup> Certainly, PSP has provided nothing to prove that legal spending on this level is reasonable and necessary. As PSP’s pervasive pattern of excessive

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<sup>107</sup> TP-190976, Order 09 at ¶ 280.

<sup>108</sup> *Id.* at ¶ 287.

<sup>109</sup> Moore, Exh. MM-1T at 44-49.

<sup>110</sup> Moore, Exh. MM-13.

<sup>111</sup> TP-190976, Order 09 at ¶ 287 (citing *Petition of Puget Sound Power and Light Co. for an Order regarding the Accounting Treatment of Residential Exchange Benefits*, Docket UE-920433 (consol.) Eleventh Supplemental Order (Sept. 21, 1993) (disallowing costs of expert witness testimony that raised potential conflicts of interest)).

and unnecessary legal spending continues unabated, the Commission should limit recovery.

**d. PSP’s UTC–specific consulting and legal costs are excessive. PMSA proposes specific adjustment amounts given the lack of relevance and applicability of the expenses to this rate case.**

68 In Capt. Moore’s testimony, PMSA recommended excluding certain amounts PSP spent in preparing and pursuing this rate case based on the nature, scope, and irrelevancy of the testimony solicited and provided.<sup>112</sup> PSP’s rebuttal testimony did not respond to these recommendations.

69 For example, to the extent that PSP is simply re-litigating foundational issues from the prior rate case, the corresponding legal and consulting costs should be disallowed if the Commission refuses to agree to revise its rate-making methodology. Or, if PSP’s arguments to revise these foundational issues are successful, they should be amortized on a seven-year collection schedule, as in the prior case. To do otherwise would simply incentivize PSP to re-argue already settled issues, which in no way benefits ratepayers.

70 Another excludable expense is the testimony of PSP’s experts who have acknowledged that they did not provide independent research and analysis but were simply repackaging PSP’s evidence and presenting it as their own. Both Mr. Lough<sup>113</sup> and Mr. Eriksen<sup>114</sup> admitted not only that PSP selected and provided the foundational documents for their testimony, but also that they did not provide their

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<sup>112</sup> Moore, Exh. MM-15.

<sup>113</sup> Lough, Exh. DL-29X at 2-3.

<sup>114</sup> Eriksen, Exh. KAE-6X at 4-8, 27; Exh. KAE-7X at 5-6.

own independent analysis of that data. For instance, Mr. Lough never analyzed the actual applicant pool from which PSP draws potential pilot trainees despite opining on the relevant pool as a national one.<sup>115</sup> Mr. Eriksen admitted that PSP did not retain him to provide his own independent cargo forecast or a vessel forecast.<sup>116</sup> As such, PSP could have simply presented this data to the Commission without hiring Mr. Lough or Mr. Eriksen. Mr. Eriksen's fees are particularly expensive: his rate of engagement to add essentially no value to information already in the possession of PSP was a fixed \$60,000, plus testimony preparation at \$780 per hour, and time waiting to testify and testifying at \$1,170 per hour.<sup>117</sup>

71 Further, as noted in PMSA's testimony, the UTC-legal breakdown in expenses, even for the test year, are limited only to recapture of the prior rate case costs, and PSP does not break-out its general versus UTC-related legal expenses for this rate case.<sup>118</sup> This hinders any effort to identify which costs are general-legal and which are UTC-legal in nature, especially given the fact, again, that PSP's discovery responses yielded no transparency into these matters.<sup>119</sup>

72 The recent rate hearing has only served to raise more alarms and serious concerns about the profligate UTC-related legal and consultants spending. The evidentiary hearing put on full display the complete and unnecessary waste of tens of thousands of dollars during those three-days alone. The hearing's virtual

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<sup>115</sup> Lough, Exh. DL-29X at 5.

<sup>116</sup> Eriksen TR. at 767:16 – 770:2.

<sup>117</sup> Eriksen, Exh. KAE-8X.

<sup>118</sup> Moore, Exh. MM-1T at 49:16-52:23.

<sup>119</sup> Moore, Exh. MM-13.

platform allowed for significant flexibility for witnesses and the parties to manage costs by avoiding unnecessary travel. Yet, PSP generated a host of hearing-specific travel and witness costs, presumably flying Mr. McNeil in from Washington D.C., flying Mr. Stoller in from Arizona, flying Mr. Eriksen in from Tennessee, and likely paying for travel for multiple witnesses from Portland, hosting meals, paying for lodging for all witnesses, and incurring charges for the time of experts dedicating resources to this hearing for several days. PSP also presumably paid Dr. Czeisler to be available for an entire hearing day when he was not even on the cross-examination list. Of course, in a virtual hearing environment, almost none of these expenses needed to be incurred at all, or only on a very minimal basis. Even the expenses of the Haglund Kelly legal team itself going to Seattle to conduct the hearing in person at the offices of PSP was likely more expensive than the legal team handling the hearing from its office in Portland, where only those pilots and PSP staff necessary to participate could have either attended in Portland or virtually at much less expense.

73 As noted above with respect to general legal fees, the Commission has already warned PSP that it “may limit recovery of excessive legal or expert witness fees when the evidence establishes that certain expenses are unreasonable or unnecessary.”<sup>120</sup> With respect to excessive and unnecessary legal expenses in the UTC rate case, including the evidentiary hearing, we do not know with specificity

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<sup>120</sup> TP-190976, Order 09 at ¶ 287 (citation omitted).



what these adjustments should be, but these costs benefit PSP alone and should not be borne by ratepayers.

**e. Ratepayers should not be required to pay an insurance premium for coverage of pilots' "Criminal Acts Fines & Penalties" of any amount.**

74 PMSA objects to the inclusion of the insurance premiums for coverage for "Criminal Acts Fines & Penalties - \$300,000" in the rates.<sup>121</sup> In the current policy, the full premium for all 53 licensed pilots at \$400 per pilot is \$21,200.<sup>122</sup> PMSA does not object to the premium that pays for the defense against an allegation of criminal acts, but if a pilot is convicted, the costs of those fines and penalties should not be paid by the ratepayers who are entitled to safe, competent, and lawful pilotage service as part of the "regulatory compact."

75 PSP's response, from its insurance broker, is that underwriters have found a way to charge pilots for coverage which, after a conviction, might ultimately not pay any benefit to the pilot who is found guilty at all.<sup>123</sup> This is hardly solace for the ratepayer, who is now paying a premium for a policy written in such a way that the insurance underwriter might not ever have to pay out, as advocated for by the broker who sold the policy to the pilots. If individual pilots can find an underwriter willing to provide this type of coverage, then pilots who want it should pay for it. Such costs benefit only the pilot and should not be externalized to a ratepayer who neither benefits nor has any assurance of the payout of the policy.

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<sup>121</sup> Moore, Exh. MM-1T at 58:1-20.

<sup>122</sup> McCarthy, Exh. SM-15X at 4.

<sup>123</sup> McCarthy, Exh. SM-1T at 6:22-7:7.

**f. With PSP’s acknowledgement that it listed callbacks as an “Expense” in error, the Commission should adopt the Staff accounting recommendation.**

76 As originally presented in this case, PSP proposed to treat callbacks as an “Expense.”<sup>124</sup> Both Staff and PMSA objected to this treatment in light of the Commission’s findings, conclusions, and direction in the prior rate case that callbacks are fully funded at the time a vessel pays for pilotage services and that they use full accrual method accounting to defer revenues from a callback assignment.<sup>125</sup> Furthermore, Staff recommended that the Commission update its treatment of callbacks such that these liabilities are accounted for as equity liabilities amongst the pilots, not as a PSP liability.<sup>126</sup>

77 In its rebuttal testimony, PSP concurred that its original treatment of callbacks as an expense was an error.<sup>127</sup> But PSP neither corrected its test year financials nor corrected its 2022 financial documents that were finalized after the submission of PSP’s rebuttal testimony.<sup>128</sup> Moreover, PSP admitted that the acknowledgment of callbacks existed on paper only: it fully distributed the cash earned from vessels to whom callback services were provided and has set aside no current year revenues to pay for future callback year liabilities.<sup>129</sup>

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<sup>124</sup> Norris, Exh. JJN-01T at 3:8-15.

<sup>125</sup> TP-190976, Order 09 at ¶ 235-236.

<sup>126</sup> Young, Exh. MY-1T at 8:5-9.

<sup>127</sup> Norris, Exh. JJN-04T at 2:5-13.

<sup>128</sup> Moore, Exh. MM-80X at 30:2.

<sup>129</sup> Norris, Exh. JJN-8X at 1-2.

78 In light of PSP’s acknowledgement of the misapplication of the prior rate case instructions, the Commission should adopt the recommendation of Staff to improve the treatment of callbacks. Moreover, the Commission should be explicit with PSP about the situation that PSP places itself in if it continues to fully distribute the cash proceeds from callbacks to all pilots in the year earned instead of setting them aside to cover the deferred compensation liability that PSP pilots are creating among themselves. There is no future situation in which the ratepayers should be asked to pay again for these liabilities when they come due and payable.

**g. The Commission should adopt the Staff recommendation to freeze the PSP retirement plan and direct PSP to complete all the outstanding requirements in Order 09.**

79 PMSA agrees with the Staff recommendation that PSP pension plan costs should be held “at the level of the previous rate case” as they “are the best currently available known and measurable proxy for pension costs,” and that until an agreement on a new direction has been reached consistent with the Commission’s Order in the last rate case, “any costs included would be based on estimates or projections . . . that would probably not have much of a grounding in fact.”<sup>130</sup> In fact, as pointed out in PMSA’s testimony, the projections and estimates used by PSP’s own actuary were already substantially inconsistent with PSP’s own pro forma by the time rebuttal testimony was due in this case.<sup>131</sup>

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<sup>130</sup> Young, Exh. MY-1T at 22:15-23:2.

<sup>131</sup> Moore, Exh. MM-1T at 241-244.

80 The extensive testimony regarding the PSP retirement plan and its related issues by both Capt. Moore<sup>132</sup> and PMSA's actuary Mr. Noble<sup>133</sup> support the Staff recommendation by creating flexibility for the parties to properly implement the provisions of Order 09 regarding pilot retirement systems: to hold the required workshops; to conduct the examinations necessary; to collaborate on comprehensive reports and recommendations; and to fully explore the ways to fund or not fund, including pilot contributions, both existing pilotage retirement liabilities and deferred compensation and future pilotage retirement liabilities and deferred compensation.

81 All the aspects of PSP's proposals are challenged by significant outstanding questions regarding variables, costs, and uncertainty that have not been addressed. These questions were literally unanswered since PSP refused to answer even a single data request proffered by PMSA to Mr. McNeil and Mr. Wood.<sup>134</sup> Even if PSP had participated in discovery on these items in good faith, the Staff recommendation remains the best path forward at this time because the Commission cannot act with certainty regarding the surcharges that PSP proposes to fund its recommended pension transition. For example, as there are no estimates of ratepayer costs, and they suffer from the lack of WAC 480-07-525(4)(s) comparisons, would PSP even agree to go through with its own planned transition if

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<sup>132</sup> *Id.* at 215-263.

<sup>133</sup> Noble, Exh. CN-1T *et seq.*

<sup>134</sup> Noble, Exh. CN-4.

they could not externalize 100 percent of the liabilities to ratepayers? PSP has not addressed this crucial question.

82 From a legal perspective, significant uncertainty abounds as well. PSP has conspicuously avoided the question of whether PSP can lawfully act as an “employer” for purposes of a Defined Benefit Multiple Employer Plan. Despite PSP’s reference to a vague and unsupported “legal opinion” of PSP’s expert, who apparently bases his opinions on off-the-record conversations and unwritten commitments from unnamed sources, PSP would not disclose a copy of his actual opinion in writing. PSP still cannot explain why it is recommending a pathway which is facially not allowed under the same recent changes to federal law that the same expert cites as a basis for moving forward. And, in his draft request for U.S. Department of Labor advisory opinion, presented for the first time in rebuttal,<sup>135</sup> PSP’s expert fails to present this central question.

83 Finally, PMSA asks the Commission to be as detailed as possible with the parties regarding the work-product and the processes to develop the work-product that they must present to the Commission prior to future rate case filing. The Commission’s directions to parties in Order 09 addressed both procedure and substance but ultimately had the aim of producing specific reports and work product. Specifically, as discussed in PMSA’s testimony, these should include at least the production of (1) an actuarial report, with all assumptions and issues agreed upon or disagreed upon and why; (2) a report describing the options, and

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<sup>135</sup> McNeil, Exh. BJM-06.

costs and benefits of moving forward; and, (3) a final recommendation of which alternatives should or should not be considered by the Commission, the parties' opinions, and PSP's specific reasons for accepting or rejecting PMSA's recommendations and why, including consideration of pilot contributions.<sup>136</sup> The more explicit the Commission can be the better. For instance, when PMSA offered these outcomes as the purpose of the workshops under the prior rate case Order, PSP responded that "it would be a waste of time to attempt to draft some sort of joint stakeholder report to the UTC regarding our negotiations," and instead PSP declared that "[b]etween letters and emails, the record is quite clear and each party is free to submit a report to the UTC as it sees fit."<sup>137</sup> The Commission should be explicit that such a report is not a "waste of time" and that PSP should produce and include a collaborative report with ratepayers in its initial filing for its next rate case.

**B. PSP's failure to comply with the Commission's rules and instructions are further grounds for rejecting PSP's proposals.**

84 Since the legislature transferred pilotage rate making to the Commission, the Commission has established a clear framework to guide pilotage rate cases. First, all the principal parties in this case participated in the development of the baseline regulations that provide structure and direction to pilotage rate cases.<sup>138</sup> Then, the first pilotage rate case culminated in two orders, Order 09 and Order 12, that

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<sup>136</sup> Moore, Exh. MM-1T at 261:11-262:18.

<sup>137</sup> Costanzo, Exh. CPC-14.

<sup>138</sup> WAC 480-07-505, WAC 480-07-525 (as adopted, WUTC Docket TP-180402, General Order R-596) (2019).

outlined specific issues and instructions for the parties to address prior to the filing of this general rate case. These rules and instructions, which have not been challenged, are unambiguous and easily implementable. Yet PSP has failed to comply with them in its filing in this case. PSP has failed to follow the Commission's regulations, failed to apply the Commission's rate-making methodologies, and failed to follow the instructions set forth in Order 09 and Order 12. On these bases alone, the Commission should reject the PSP-proposed tariff as procedurally inadequate. The Commission's final order in this case should also warn that PSP's failure to adhere to Commission rules and instructions in future filings will result in dismissal without prejudice.

**1. PSP failed to comply with the Commission's rules.**

85 PSP failed to comply with WAC 480-07-525(4)(s) in multiple instances, as Capt. Moore's testimony explains.<sup>139</sup> This rule requires PSP to present workpapers showing how its proposed changes in methodologies for adjustments would be calculated under the currently established methodologies and narrative describing the change. PSP has proposed numerous changes in methodologies without any such comparative workpapers or narrative, and this defect exists for all of PSP's proposed automatic adjusters.

86 This failure echoes PSP's failure to present the required comparison information for its proposed changes to the tariff in the last rate case—a failure that the

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<sup>139</sup> Moore, Exh. MM-1T at 14-16.

Commission acknowledged but excused in that rate case.<sup>140</sup> These rules exist for a reason: they provide for clear comparisons of proposed changes and fair notice and transparency on the front end of the rate-making process. For example, in the last rate case, had PSP complied with the rules, there would have been notice of PSP's intention to change the longstanding methodology for applying the tariff to TOTE. PSP must not continue to be excused from compliance with the rules.

87 PSP also failed to clearly comply with WAC 480-07-525(4)(m) requiring “projected changes in vessel assignments.”<sup>141</sup> Nevertheless, in response to Bench Request No. 4, PSP now asserts that this information was provided but was buried deep within its worksheets without labeling.<sup>142</sup> The vessel assignment projection requirement is separate from the pro forma and revenue impact calculation requirements at WAC 480-07-525(4)(d)-(e). That is how PSP treated these requirements in the prior rate case, where PSP provided specific vessel assignment forecast testimony,<sup>143</sup> acknowledged this requirement explicitly, and presented these forecasts separately from its pro formas and revenue calculations.<sup>144</sup> In contrast, PSP has provided no testimony regarding this projection and no evidentiary basis or explanation for that projection whatsoever in this case. Further, compliance with the rules should be obvious, not hidden deep within workpapers.

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<sup>140</sup> TP-190976, Order 08 at ¶ 20.

<sup>141</sup> Moore, Exh. MM-1T at 16:9-24.

<sup>142</sup> PSP Response to Bench Request No. 4.

<sup>143</sup> TP-190976, Khawaja, Exh. SK-1T at 3-5.

<sup>144</sup> TP-190976, Burton, Exh. WTB-03–Exh. WTB-05, Exh. WTB-11–Exh. WTB-13.



88 PSP also failed to comply with the rules governing discovery in this case, as noted in testimony from Staff and PMSA witnesses, as well as PMSA's motion to exclude evidence from two PSP witnesses that showed in rebuttal their ability to provide precisely the evidence that had been refused on improper grounds in discovery.<sup>145</sup> PSP's failures to comply with discovery requirements are pervasive, as evidenced in many of the exhibits showing PSP's non-responses to data requests.<sup>146</sup> This should at least affect consideration of PSP's claims in this case. The Commission should also take this pattern of conduct into consideration in its instructions to guide future pilotage rate cases.

**2. PSP never implemented several of the Commission's instructions from the prior case.**

89 The prior pilotage rate case culminated in instructions from the Commission on various issues. These include instructions related to (1) a plan to transition PSP to full accrual accounting for existing retirement liabilities, (2) a plan to transition PSP to a fully funded pension plan, (3) PSP's accounting for callback liabilities, (4) proactive disclosure of PSP contracts with pilot-owned entities, and (5) submission of evidence by PSP on how its position on TOTE's tariff accord with principles of rate shock and gradualism. PSP followed none of these instructions. The Commission should consider this failure as a factor in its final order in this case.

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<sup>145</sup> Young, Exh. MY-1T at 5:7-6:16; Moore, Exh. MM-1T at 202:22-203; PMSA's Mtn. to Strike McNeil & Wood Evidence at ¶¶ 8-19.

<sup>146</sup> See, e.g., Noble, Exh. CN-4; Moore, Exh. MM-30; Moore, Exh. MM-1T at 45:9-12; Moore, Exh. MM-63T at 4:25-5:3; Young, Exh. MY-1T at 5:14-15.

90 First, Order 09 ordered PSP to initiate discussions to develop plans on two transitions with respect to retirement expenses: a transition to “full accrual accounting” for retirement liabilities and a transition to a fully funded retirement plan.<sup>147</sup> While PSP initiated discussions regarding the latter, it never initiated any discussions regarding the former.<sup>148</sup> PSP’s accounting for its current retirement liabilities suffers from all of the same accounting and underfunding defects that Staff was concerned about in the prior rate case.<sup>149</sup>

91 And, although PSP initiated discussions on transitioning to a fully funded retirement plan, PSP did not follow the Commission’s specific instructions on how those discussions were to be conducted and how they were to result in reports to allow the Commission to evaluate this critical issue in this rate case. Order 09 instructed PSP to include, “as PSP proposes, a comprehensive stakeholder evaluation and a participation study.”<sup>150</sup> PSP did not prepare this evaluation and study.<sup>151</sup> Another requirement was for discussions “to address whether active pilots should be required to contribute directly to PSP’s retirement fund.”<sup>152</sup> PSP refused to discuss even the possibility of any pilot contributions toward the pilot retirement plan.<sup>153</sup> The “required workshops” were also to address retirement payments for

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<sup>147</sup> TP-190976, Order 09 at ¶ 191.

<sup>148</sup> Moore, Exh. MM-1T at 263:14-18.

<sup>149</sup> TP-190976, Order 09 at ¶¶ 181-182.

<sup>150</sup> *Id.* at ¶ 191.

<sup>151</sup> Moore, Exh. MM-1T at 250:15–251:16 (citing PSP briefing in the prior rate case describing the evaluation and study as “comprehensive and broad-ranging” and a “collaborative process.”)

<sup>152</sup> TP-190976, Order 09 at ¶ 191.

<sup>153</sup> Moore, Exh. MM-1T at 252:1-13.

PSP's former executive director.<sup>154</sup> That, too, did not occur.<sup>155</sup> Discussions were to "be conducted as workshops facilitated by a mutually acceptable third-party with expertise in retirement planning, such as an actuary."<sup>156</sup> PSP refused both to conduct the discussions as a series of informal workshops<sup>157</sup> and to cooperate in selecting and hiring a mutually acceptable third-party actuary or other individual with retirement expertise.<sup>158</sup> Further, all this was to "be concluded prior to PSP's next general rate case."<sup>159</sup> PSP filed this general rate case without having followed any of these specific instructions.

92        The workshops were intended to yield substantive outcomes that would assist the Commission in fully evaluating this critical issue in this rate case. As such, Order 09 directed PSP to include in its initial filing in the next general rate case any "agreements, recommendations, or contested issues that arise from the workshops, and PSP's responses thereto."<sup>160</sup> PSP did not include any report with these conclusions in its filing in this rate case. When PMSA suggested that the parties collaborate on the creation of such a report, PSP's reply was that "it would be a waste of time to attempt to draft some sort of joint stakeholder report to the

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<sup>154</sup> TP-190976, Order 09 at ¶ 192.

<sup>155</sup> Moore, Exh. MM-1T at 263:19-24.

<sup>156</sup> TP-190976, Order 09 at ¶ 192.

<sup>157</sup> Moore, Exh. MM-1T at 253:18–256:17 (citing Costanzo, Exh. CPC-11 ("Given all of the work that has gone into planning this initial PSP Pension stakeholder meeting, we are not willing to scale it back to a meeting to plan a series of workshops.")).

<sup>158</sup> *Id.* at 254:1–256:17.

<sup>159</sup> TP-190976, Order 09 at ¶ 192.

<sup>160</sup> *Id.*

UTC regarding our negotiations.”<sup>161</sup> And, rather than provide responses to contested issues identified in the workshops, PSP declared an impasse in the discussion before the parties were even able to identify the contested issues in any detail, much less agree on recommendations to resolve them.<sup>162</sup>

93 Staff was also intending to conduct another workshop required under Order 09 “on a similar timeline to the retirement plan workshop[s].”<sup>163</sup> That was to be a “Staff-led technical workshop to address the rate of return methodology in the context of setting rates for pilotage service” in which stakeholders would participate.<sup>164</sup> PSP filed before the occurrence of this technical workshop.

94 Next, with respect to callback liabilities, Order 09 required PSP to use full accrual accounting “to record callback liabilities in the period in which they occur.”<sup>165</sup> PSP instead recorded callback liabilities as “offsetting expenses” to pilots in the period in which they are incurred.<sup>166</sup> Both PSP witnesses Mr. Burton and Ms. Norris agreed that callbacks should not be included in the revenue requirement, but PSP still included these funds as a “Seattle Office Operating Expense and Administrative Overhead” expense in its 2022 financials.<sup>167</sup>

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<sup>161</sup> Moore, Exh. MM-1T at 252:15-26.

<sup>162</sup> *Id.* at 253:1-7.

<sup>163</sup> Wash. Utils. & Transp. Comm’n, LEGISLATIVE REPORT ON ESTABLISHING MARINE PILOTAGE TARIFFS 13, n.9 (June 29, 2021).

<sup>164</sup> TP-190976, Order 09 at ¶¶ 390, 493.

<sup>165</sup> *Id.* at ¶ 236.

<sup>166</sup> Young, Exh. MY-1T at 7:13–9:16.

<sup>167</sup> Burton, Exh. WTB-08T at 6:11-16; Norris, Exh. JJN-04T at 2:8-13; Moore, Exh. MM-80X at 30:2.

95 “[W]hen regulated companies have contracts with transportation companies owned by member pilots,” specifically the Green Car Club owned and operated by PSP pilots, Order 09 established the PSP must “proactive[ly] disclos[e] such agreements in future rate case filings.”<sup>168</sup> PSP has never disclosed any such agreements though it contracts with the Green Car Club, which continues to be owned and operated by PSP pilots.<sup>169</sup>

96 Finally, PSP similarly failed to follow instructions under Order 12 “require[ing] PSP to address how its proposed rate design is consistent with principles of rate shock and gradualism.”<sup>170</sup> PMSA concurs with and defers to TOTE’s fuller briefing on this issue.

**3. Future disregard of Commission rules and instructions should result in dismissal without prejudice until all noncompliance is cured.**

97 The public comment from former Staff member Scott Sevall advocating that “the UTC hold petitioners accountable and reject future filings that do not meet the published WAC requirements for filings” presents a sensible way to handle this problem going forward.<sup>171</sup> The Final Order in this rate case should include an express warning to PSP that disregard of the Commission’s rules and instructions in future filings will result in their dismissal at the outset, with refiling permitted once PSP cures all such deficiencies.

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<sup>168</sup> TP-190976, Order 09 at ¶ 274.

<sup>169</sup> Burton, TR. at 700:13 – 702:2.

<sup>170</sup> TP-190976, Order 12 at ¶ 29.

<sup>171</sup> Public Comment Letter of Scott Sevall at 2 (Apr. 13, 2023).

**C. The Commission must decline PSP’s invitation to blur the lines of rate making with BPC jurisdiction over safety, regulation, training, and licensing of pilots.**

98 The Commission concluded as a matter of law that its rate making and economic jurisdiction over licensed pilots is limited.<sup>172</sup> This this jurisdiction did not extend to the regulation of safety, fatigue management, determining the number of licensed pilots, or other workload issues that fall under BPC jurisdiction.<sup>173</sup> The Commission should abide by these limits here. To the extent PSP’s arguments fall outside of an existing formula or rate-making methodology rates and focus instead on the safety of marine pilotage, they should be treated as outside of the Commission’s jurisdiction.

**1. PSP’s claims correlating safety, training, fatigue, diversity, or the competency of pilots with rates or income are specious.**

99 PSP makes a litany of claims regarding pilot safety, vessel safety, pilot licensing, fatigue management, and other such issues in its filing. These include arguments regarding the regulation of pilot ladders, the international system of flag state control, the adequacy of U.S. Coast Guard port state control inspections, the U.S. Coast Guard requirements of mapping of the Puget Sound to earn a First Class Pilotage Endorsement, the use of single-vessel LLC ownership structures, the global policies of P&I club underwriting, the scrapping of vessels in Sri Lanka, the abandonment of vessels in Brazil, the grounding of vessels in the Suez Canal, and the enforcement of sanctions against vessels doing business with Iran or North

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<sup>172</sup> TP-190976, Order 09 at ¶¶ 444-445, 451-452.

<sup>173</sup> *Id.*

Korea. All this is patently irrelevant to the setting of pilotage rates in the Puget Sound. Even if such issues were within the Commission's jurisdiction, PSP has not proven that there are any changes in these pilotage conditions since the final order in the prior case that all the parties accepted.

100 PSP also alleges that various other issues possibly of tangential relevance to safety and BPC jurisdiction should govern the Commission's rate making. PSP claims that its ability to provide safe pilotage services is potentially compromised due to fatigue regulations, a lack of authorized pilots, the need to achieve a "best achievable protection" standard, the need to achieve a "zero spills" strategy, and a lack of diversity amongst the pilotage corps. While these general topics are potentially of merit at the BPC, PSP's claims are specious, suffer from logical infirmities, and completely fail for lack of evidence. The evidence demonstrates that the Puget Sound has in fact achieved a zero-spills standard over the last two decades,<sup>174</sup> has a declining rate of pilotage incidents,<sup>175</sup> and that PSP will not dispatch a pilot in violation of the rest rules.<sup>176</sup>

101 To the extent that PSP's arguments "play the safety card" in this hearing, they ask the Commission to ignore the stellar PSP safety record that occurs across all levels of income. Despite this evidence, PSP's arguments require an illogical belief

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<sup>174</sup> Carlson, Exh. IC-17X at 5 ("PSP admits that since at least 1999, no significant oil spills have occurred in the Puget Sound Pilotage District that involved an allision, collision, or grounding of a foreign flagged vessel while under pilotage by a PSP pilot.").

<sup>175</sup> Moore, Exh. MM-35.

<sup>176</sup> Valentine, TR. at 687:1 – 688:9; Carlson, TR. at 341:21 – 342:1.

that a pilot's duty of care or competence is contingent on a certain level of pilot DNI or that PSP would dispatch its own members to jobs in a manner that is knowingly unsafe in response to displeasure at the rates adopted in a tariff hearing.

102 Likewise, to the extent that PSP's arguments attempt to link or correlate rates of pay to safety and diversity, these are pure conjecture. If anything, the evidence is to the contrary. For example, the same pilotage grounds in Louisiana that are listed as earning the highest net income in the testimony of Mr. Lough<sup>177</sup> also happen to be amongst the pilotage grounds with the most incidents and safety issues in the testimony of Capt. Stoller.<sup>178</sup> As for diversity, the claim that higher rates create more diversity in pilotage grounds would be simple to prove if it were true—the pilotage grounds with the highest rates of pay would be exceptionally diverse, as well as safer. We know that these other pilotage grounds are not safer than the Puget Sound. And despite PSP and others professing such concern for diversity, the American Pilots Association was not able to produce any baseline diversity data for pilotage in this case because the “APA does not track” its membership data by gender, race or ethnicity, or by prior industry sector.<sup>179</sup> When asked for five years of baseline data regarding diversity, PSP could produce data only from 2022.<sup>180</sup> To have virtually zero demographic data regarding its diversity baseline is not

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<sup>177</sup> Lough, Exh. DL-06.

<sup>178</sup> Stoller, Exh. MSS-03.

<sup>179</sup> Costanzo, Exh. CPC-32X at 1-2.

<sup>180</sup> *Id.* at 3.



consistent with claims to be rectifying its diversity issues and making diversification of the pilotage corps a top priority.

**2. The Commission should not abdicate its jurisdiction over setting pilotage rates to the BPC through an automatic adjuster based on the number of pilots.**

103 While all the automatic adjusters proposed by PSP are without merit and should be denied, the automatic adjuster proposed that would automatically increase or decrease the tariff based upon the number of licensed pilots is particularly egregious. It impermissibly blurs the jurisdiction between the Commission and BPC. This automatic adjuster would directly undermine the bright-line assignment of the regulation of the economics of pilotage and the tariff to the Commission by ceding one aspect of direct rate-making authority to the BPC. This adjuster would turn every decision to license a new pilot by the BPC into a rate decision, and a hearing to determine the overall number of licensees or a target assignment level into a de facto rate hearing. This is a particularly corrosive proposal directly aimed at undermining this Commission's authority and reinstating the BPC as the rate-making authority for pilotage. This should be strenuously avoided.

## V. CONCLUSION

104 Since PSP's last general rate case, little if anything has changed with respect to the costs and nature of pilotage work, the operations of the state pilotage monopoly in the Puget Sound, and the regulatory environment in which it operates. Even vessel traffic, as PSP projects it, is stable. Certainly, nothing warrants doubling PSP's total net revenue. Rather, following the Commission's established rate-setting

methodology, PMSA and Staff largely agree on modest multi-year rate increases. The Commission should adopt recommended refinements such as a process for addressing pilot boat capital costs, efficiency-inducing profit-sharing, and disincentives for the pilotage monopoly to impose unreasonable delays on its customers. And the Commission should reject PSP's arguments for automatic adjusters that would bypass the Commission's vital role in ensuring rates remain fair, just, reasonable, and sufficient.

DATED this 28th of April, 2023.

Respectfully submitted,

*s/ Michelle DeLappe*

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Michelle DeLappe, WSBA No. 42184

Counsel for Pacific Merchant Shipping Association

**ATTACHMENT**

**Information for Table at ¶ 57**

YEAR	<i>Net Income ("DNI")</i>				
	As Reported <sup>1</sup>	As Insured <sup>2</sup>	PMSA <sup>3</sup>	Staff <sup>4</sup>	PSP <sup>5</sup>
<b>2020</b>	\$204,580				
<b>2021</b>	\$295,616				
<b>2022</b>	\$335,561				
<b>2023</b>		\$320,000			
<b>2024*</b>			\$346,391	\$443,742	\$574,087
<b>2025*</b>			\$357,475	\$457,942	\$592,458
<b>2026*</b>			\$368,914	\$472,596	\$611,416

YEAR	<i>Number of Pilots</i>				
	As Reported <sup>6</sup>	As Insured <sup>2</sup>	PMSA <sup>3</sup>	Staff <sup>4</sup>	PSP <sup>10</sup>
<b>2020</b>	51.5				
<b>2021</b>	52.9				
<b>2022</b>	52.5				
<b>2023</b>		53			
<b>2024*</b>			54.9	56	56
<b>2025*</b>			55	56	56
<b>2026*</b>			56	56	56

YEAR	<i>TDNI</i> TDNI = (DNI x Number of Pilots)				
	DNI x # of Pilots	As Insured	PMSA	Staff	PSP
<b>2020</b>	\$10,535,870				
<b>2021</b>	\$15,643,382				
<b>2022</b>	\$17,625,707				
<b>2023</b>		\$16,960,000			
<b>2024*</b>			\$19,016,866	\$24,849,545	\$32,148,872
<b>2025*</b>			\$19,661,125	\$25,644,738	\$33,177,636
<b>2026*</b>			\$20,659,184	\$26,465,369	\$34,239,320

\* Tariff Proposed Yr 1=2024, Tariff Yr 2 = 2025, Yr 3 = 2026

**Sources for Tables:**

<sup>1</sup> 2020: Moore, Exh. MM-3.

2021: Norris, Exh. JJN-02 at 23.

2022: Moore, Exh. MM-80X at 24.

<sup>2</sup> McCarthy, Exh. SM-5X.

<sup>3</sup> Moore, Exh. MM-1T at 17.

<sup>4</sup> 2024: Young, Exh. MY-9.

2025-26: Prior Yr x COLA (Young, Exh. MY-1T at 15:10-12).

COLA= 3.2% (Moore, Exh. MM-5).

<sup>5</sup> 2024: Lough, Exh. DL-25T at 6-7.

2025-26: Prior year x COLA (Carlson, Exh. IC-01T at 31:4-6).

COLA = 3.2% CPI (Moore, Exh. MM-5).

(Note: Year 2 and 3 totals do NOT include any revenue from Auto-Adjusters.)

<sup>6</sup> 2020-2021: Norris, Exh. JJN-02 at 23.

2022: Moore, Exh. MM-80X at 24.