

BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-190976

**REPLY BRIEF ON BEHALF OF
PACIFIC MERCHANT SHIPPING ASSOCIATION**

September 25, 2020

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TABLE OF CONTENTS

- I. INTRODUCTION 1
- II. STAFF’S BRIEF PROVIDES COMPELLING SUPPORT FOR ITS RECOMMENDATION; PMSA OFFERS TWO CLARIFICATIONS..... 1
 - A. Though the tariff should be phased in, the most important consideration is to avoid arbitrary factors in ratemaking. 2
 - B. For self-insurance premiums, the tariff should respect the two payment streams established by law: (1) the assessment on PSP, as distinct from (2) the surcharge on vessels..... 3
- III. PSP’S BRIEF PRESENTS UNCONVINCING ARGUMENTS AGAINST STAFF’S AND PMSA’S RECOMMENDATIONS. 6
 - A. PSP has not proven any of its “comparability” claims. 6
 - 1. PSP offers disparate lists of ports as “comparable” to the Puget Sound depending on the purpose of its arguments..... 7
 - 2. PSP’s evidence contradicts its own definition of “comparable” ports as those with a similar vessel mix. 9
 - 3. PSP also terms “comparable” all ports with “publicly available” financial data, but it is very selective in the ports for which it presents such data. 10
 - 4. PSP provides no analysis of potential comparability factors. 15
 - 5. The entire notion of comparability fails. 16
 - B. The Puget Sound pilotage district has no shortage of pilots..... 18
 - C. PSP’s evidence validates PMSA’s concerns regarding Puget Sound port competitiveness..... 22
 - D. PSP presents no evidence countering expert analysis showing that the current tariff provides fair and reasonable income..... 24
 - E. PSP’s over-earnings “problem” is not a problem. 26

F.	PSP's inconsistent presentation of data undermines its arguments on workload.	27
IV.	CONCLUSION	30

TABLE OF AUTHORITIES

Statutes

Ch. 81.116 RCW	11
Laws of 2019, ch. 416, §108.....	3, 4
Laws of 2017, ch. 313, §108.....	5
RCW 81.16.030	24
RCW 88.16.005	24
RCW 88.16.090	12, 19

Commision Orders/Documents

<i>In re Port of Grays Harbor</i> , Docket TP-190965, Memo (Dec. 19, 2019)	11
<i>Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots</i> , Docket TP-190976, Order No. 02 (Dec. 17, 2019).....	4
<i>Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots</i> , Docket TP-190976, Order No. 08 (Aug. 7, 2020).....	24

Regulations

WAC 363-116-080.....	12
WAC 363-116-301.....	3, 4
Ch. 480-160 WAC	11

Other Administrative Materials

Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology, 84 Fed. Reg. 58,099 (Oct. 30, 2019).....	13, 19
Great Lakes Pilotage Rates—2018 Annual Review and Revisions to Methodology, 83 Fed. Reg. 26,162 (June 5, 2018)	14
Great Lakes Pilotage Rates—2016 Annual Review and Revisions to Methodology, 81 Fed. Reg. 11,908 (Mar. 7, 2016).....	14
2019 Pacific Pilotage Authority Annual Report at 26-45, available at https://www.ppa.gc.ca/sites/default/files/2020-07/PPA%202019%20Annual%20Report%20Eng%20FINAL.pdf	12

Wash. State Office of Financial Management, Masters, Mates, and
Pilots (MM&P) Mates (2019-21), available at
[https://ofm.wa.gov/state-human-resources/labor-
relations/collective-bargaining-agreements/masters-mates-and-
pilots-mmp-mates-2019-21](https://ofm.wa.gov/state-human-resources/labor-relations/collective-bargaining-agreements/masters-mates-and-pilots-mmp-mates-2019-21) 11

I. INTRODUCTION

1. Commission Staff has provided compelling arguments supporting its recommendation to reject tariff proposed by Puget Sound Pilots (PSP) in favor of other revisions to the tariff. In contrast, PSP, while accepting Staff's basic formula, argues unconvincingly against "the methodology by which its individual elements should be calculated."¹ PSP's main arguments are that (1) pilot net income should be based on what PSP claims other pilots receive in "comparable" pilotage districts,² multiplied by an "implied" number of non-existent pilots;³ and (2) increased income is necessary to "attract and retain" pilots, else Puget Sound will continue to suffer a pilot "shortage."⁴ The Commission should reject these and other PSP claims, as discussed below.

II. STAFF'S BRIEF PROVIDES COMPELLING SUPPORT FOR ITS RECOMMENDATION; PMSA OFFERS TWO CLARIFICATIONS.

2. The Pacific Merchant Shipping Association (PMSA) agrees with most of Staff's Initial Brief. It poses no conflict with most of the revisions and clarifications PMSA has requested for greater fairness, transparency, and accountability in applying the revenue requirement formula.⁵ It also dovetails with PMSA's recommendations for laying a better foundation for future tariff proceedings.⁶ In light of Staff's discussion of the request for phasing tariffs in

¹ PSP Initial Br. at ¶ 2.

² PSP Initial Br. at ¶¶ 31-42.

³ PSP Initial Br. at ¶¶ 56-73.

⁴ PSP Initial Br. at ¶¶ 64, 99.

⁵ PMSA Initial Br. at ¶¶ 4-46.

⁶ PMSA Initial Br. at ¶¶ 77-89.

over multiple years, PMSA here offers additional clarification on that request. PMSA also addresses one area where substantive disagreement exists: the BPC's self-insurance premiums.

A. Though the tariff should be phased in, the most important consideration is to avoid arbitrary factors in ratemaking.

3. Staff recommends that the Commission “decline to implement a multi-year rate plan”⁷ despite the other parties’ support for phasing in increases.⁸ Staff explains that a multi-year plan cannot be determined due to the lack of vessel projections for the second and third years of the plan.⁹ As such, Staff indicates that a multi-year plan would run the risk of arbitrary ratemaking.¹⁰

4. Avoiding arbitrary factors in the application of the revenue requirement is clearly a top priority. PMSA seeks an adjustment only to smooth out the introduction of the tariff changes after the establishment of the revenue requirement as a matter of policy.¹¹ This is to avoid precipitous rate increases on the smallest ratepayers. If the Commission determines that this policy outcome cannot be accomplished without introducing arbitrary factors into the ratemaking, then the Commission should follow Staff’s recommendation to decline a multi-year plan.

⁷ Staff Initial Br. at ¶ 4.

⁸ PMSA Initial Br. at ¶ 36.

⁹ Staff Initial Br. at ¶ 66.

¹⁰ Staff Initial Br. at ¶ 66.

¹¹ PMSA Initial Br. at ¶ 36.

B. For self-insurance premiums, the tariff should respect the two payment streams established by law: (1) the assessment on PSP, as distinct from (2) the surcharge on vessels.

5. Staff argues that the Commission should change the existing bifurcated responsibility for charges for the BPC's self-insurance premium with the result that these charges fall entirely on ratepayers.¹² In its analysis, Staff focuses on the words in the statute and regulation that refer to the \$150,000 as being paid from tariffs.¹³ Staff's reinterpretation of the existing law overlooks key aspects of the context and overall scheme of the self-insurance premium charges, however. Those aspects require the annual \$150,000 charge be imposed directly on PSP, not on PSP's customers.

6. The Legislature created two payment streams to fund the self-insurance premiums. The first, the annual payment of \$150,000 to the BPC, was to be funded by the "first one hundred fifty thousand dollars collected through Puget Sound pilotage district pilotage tariffs."¹⁴ This means that PSP had to turn over the first tariffs of the year that it collected, before payment of any PSP expenses or distributions to its members. The law in no way implies that the tariff should increase in order to cover that. The second payment stream, in contrast, falls squarely on PSP's customers by "[a]ssessing a self-insurance premium

¹² Staff Initial Br. at ¶¶ 58-63 (discussing ESHB 1160 and WAC 363-116-301).

¹³ Staff Initial Br. at ¶ 62.

¹⁴ Laws of 2019, ch. 416, §108(a) (Moore, Exh. MM-52X at 5).

surcharge of sixteen dollars per pilotage assignment on vessels requiring pilotage.”¹⁵

7. The reason the Legislature established these two distinct funding mechanisms was so that both PSP and vessels shared the burden of these premiums in roughly equal parts. If the Legislature had intended pilotage customers to bear full responsibility for the premiums it would have simply relied on a higher direct surcharge and eliminated the first payment stream. The only logical explanation for creating two sources of funding is that PSP was to assume some responsibility for the premiums. Moreover, the only logical basis for requiring that PSP deposit the “first” \$150,000 collected, before it paid its expenses or members, is that the Legislature did not contemplate tariff rates increasing to allow PSP to recover this amount through additional tariff revenues.
8. The BPC was similarly explicit in its adoption of the current tariff that PSP was to pay the annual \$150,000 to the BPC “from its tariffs.”¹⁶ It made no mention of any expectation that the charge would be recoverable through increased tariffs.¹⁷ Nor could it have done so, as that would have run directly

¹⁵ *Id.* at §108(b).

¹⁶ WAC 363-116-301(1).

¹⁷ To the extent that the Commission wishes to clarify the BPC’s interpretation of these charges, the Commission has the right to consult with the BPC Chair and Executive Director and to “request assistance from the BPC for the purpose of analyzing existing evidence.” *Wash. Utils. & Transp. Comm’n v. Puget Sound Pilots*, Docket TP-190976, Order No. 02 at ¶12 (Dec. 17, 2019). Such consultation seems appropriate here.

counter to the intent of the tariff freeze directed as one of the three conditions imposed for the BPC be eligible for appropriations for the self-insurance.¹⁸ Thus the costs imposed directly on PSP could not be passed on to ratepayers.

Confirming this unambiguously, PSP itself acknowledged that the rate freeze was specifically intended to ensure that the direct charge on PSP would be non-recoverable.¹⁹

9. Allowing PSP to pass its part of this burden to ratepayers through an increased tariff would defeat the Legislature’s purpose, which it expressed by (1) establishing separate funding sources; (2) requiring the annual charge to be made specifically from the “first” \$150,000 of pilotage tariffs collected each year; and (3) freezing tariff increases for the first several years that the charges were in effect. In short, the ratepayers must pay their share of the premiums through the specific surcharge on vessels, and PSP must pay its share through the specific annual charge on the first tariff collections of the year. This is the current law, and it is reflected in the current tariff. It is PSP’s burden to demonstrate the current tariff is unfair, unjust, unreasonable, or insufficient. For this item, PSP has made no such showing. The tariff should not change just

¹⁸ Laws of 2017, ch. 313, §108 (“however this appropriation is contingent upon the board: (1) [annually depositing the first \$150,000 of tariffs collected]; (2) Maintaining the Puget Sound pilotage district pilotage tariff at the rate in existence on January 1, 2017; and (3) [assessing the surcharge on vessels]”).

¹⁹ Styrk, Exh. LS-1T at 4:14-15 (“Q: Did PSP seek to recoup that tax in rates? A: No. The Board’s rule prohibited PSP from seeking any rate increase.”).

because the regulated business would like it to. To carry out the statute, the Commission should retain this tariff provision as currently implemented.

III. PSP'S BRIEF PRESENTS UNCONVINCING ARGUMENTS AGAINST STAFF'S AND PMSA'S RECOMMENDATIONS.

10. PSP's Initial Brief posits numerous arguments that the Commission should reject. Staff and PMSA's Initial Briefs adequately address some of these points. PMSA here provides further input to supplement the initial briefing advocating the rejection of PSP's proposed tariff. Specifically, the discussion below refutes PSP's central arguments regarding comparability to other pilotage districts and the claim that it is suffering a "pilot shortage." The discussion also addresses a shared concern: port competitiveness in light of increasing costs. It also discusses PSP's criticisms of PMSA's expert's analysis of the current tariff, the imagined "problem" of over-earning if the Commission does not increase the number of "implied pilots" in the revenue requirement formula, and inconsistencies in PSP's data and arguments related to pilot workload.

A. PSP has not proven any of its "comparability" claims.

11. PSP hinges much of its proposal on claims of "comparability" to other pilotage districts. For example, PSP bases its idea of the value of pilot labor in the Puget Sound "through a comparison to earnings of pilots in other districts."²⁰ PSP argues for income comparisons based on "other state-regulated pilots who perform similar services and carry similar risk."²¹ And with

²⁰ PSP Initial Br. at ¶ 27.

²¹ PSP Initial Br. at ¶ 31.

improperly selective citations, PSP argues that such comparisons conform with what it terms “broadly adopted pilotage ratesetting principles.”²² These claims are unproven, unfocused, and unconvincing.

1. PSP offers disparate lists of ports as “comparable” to the Puget Sound depending on the purpose of its arguments.

12. At no point does PSP propose a single list of ports for use in all comparisons with the Puget Sound throughout the proceeding. On the contrary, PSP proposes a continuously changing selection of ports. The selection is entirely purpose-driven: it ties only to the particular argument PSP is trying to support in any particular moment. The claimed “comparable” ports are all over the map:

PSP SOURCE	PORTS/PILOTAGE DISTRICTS LISTED AS BASIS FOR COMPARABILITY
Moreno ²³	Alaska Marine Pilots
von Brandenfels ²⁴ & Carlson ²⁵	San Francisco Bar Pilots, Columbia River, Columbia River Bar, Crescent River, New Orleans, New Orleans-Baton Rouge, Lake Charles, Port Everglades, Aransas-Corpus Christi
Quick ²⁶	Southwest Alaska, Columbia River, San Francisco, Puget Sound, Hawaii, Sandy Hook, Maryland, Delaware, Pennsylvania, Galveston, Houston, Sabine River, Lake Charles, Associated Branch (LA), Crescent River, New Orleans/Baton Rouge, Tampa, Miami, Port Everglades,

²² PSP Initial Br. at p. 14 (heading).

²³ Moreno, Exh. SM-1T at 4:6-11 (“competitive pilot districts including Alaska”).

²⁴ von Brandenfels, Exh. EVB-1T at 19:11-20:15 (“We are asking that the tariff be set at a level that permits Puget Sound Pilots to earn income comparable to what state pilots earn in other comparable districts.”).

²⁵ Carlson, Exh. IC-1T at 17:6-13 (“the only publicly available groups are . . .”).

²⁶ Quick, Exh. GQ-11X (PSP Reply to PMSA Data Request 46) (“Captain Quick is generally familiar in his position with MM&P with pilot compensation levels, some criteria used by the various ratesetting bodies and various distinctions therein in the following states, ports and/or harbors...”).

PSP SOURCE PORTS/PILOTAGE DISTRICTS LISTED AS BASIS FOR
COMPARABILITY

	Jacksonville, Savannah, Charleston, Virginia
Carlson ²⁷	Long Beach, Los Angeles, San Francisco (Oakland), British Columbia (Delta), British Columbia (Prince Rupert), Puget Sound (Seattle)
Carlson ²⁸	Long Beach, San Francisco (Richmond), Puget Sound (Ferndale)
Carlson ²⁹	Long Beach, Los Angeles, San Francisco (Richmond), Columbia River (Vancouver, WA), British Columbia (Fraser-New Westminster), Grays Harbor (Aberdeen), Puget Sound (Tacoma)
Nielsen ³⁰	Columbia River
Quick ³¹	Oregon, Hawaii, Virginia, Louisiana
Quick ³²	Jacksonville, Canaveral, Everglades, Miami, Key West, Tampa, Associated Branch Pilots (New Orleans), Crescent River Pilots, San Francisco, Columbia River, Puget Sound
PSP Brief ³³	Oregon, Maryland, Great Lakes
PSP Brief ³⁴	California, Florida, Virginia, Hawaii, California [sic], and Louisiana

²⁷ Carlson, Exh. IC-4Tr at 47:14-16 (“For a 13,000 TEU Container ship . . . a variety of West Coast ports . . .”).

²⁸ Carlson, Exh. IC-4Tr at 49:18-20 (“a tanker . . . when compared to all other ports”).

²⁹ Carlson, Exh. IC-4Tr at 50:11-12 (“a car carrier . . . that calls on ports along the West Coast . . .”).

³⁰ Nielsen, Exh. JJN-1T at 1:10-13.

³¹ Quick, Exh. GQ-5T at 8:9-9:16 (“other states and pilotage ratesetting boards [that] use comparative pilotage pay as a standard for ratesetting prevalently”).

³² Quick, Exh. GQ-5T at 12:5-13:10 (pilotage districts with some information available for comparing workloads and incomes).

³³ PSP Initial Brief at ¶¶ 37-41 (“states where pilotage rates are established by public utility commissions whose statutory authority does not expressly require such consideration”).

³⁴ PSP Initial Brief at ¶ 42 (“As noted by Capt. Quick, a significant number of other jurisdictions require the consideration of comparability in establishing pilotage rates . . .”).

With such a wide variety of ports pointed to depending on the argument, no clear set of consistently “comparable” ports emerges in PSP’s testimony.

2. PSP’s evidence contradicts its own definition of “comparable” ports as those with a similar vessel mix.

13. PSP provides but one clear definition of when a port should be considered comparable: “[a] comparable port would be one handling ships similar to those handled by Puget Sound Pilots.”³⁵ However, PSP offers no analysis of which ports are most comparable to the Puget Sound with respect to the mix of vessel types most handled. Some PSP testimony regarding port comparability claimed to be based on “vessel mix,” but without any specifics. For instance, Capt. Nielsen vaguely claimed that the Columbia River and Puget Sound are “similar” because of “a lot of overlap in the types of ships that call on the Columbia River” and the Puget Sound.³⁶ He later admitted he had no data on the vessel mix for the Columbia River.³⁷ Likewise, Capt. Quick failed to describe how vessel mix should be assessed, evaluated, and applied as comparable, even though he explicitly disqualified ports as not comparable based on vessel mix.³⁸ He also provided no analysis or proof of a comparable vessel mix for any of the ports that he concluded were comparable enough to include in his other comparability metrics. To draw any conclusion based on vessel mix, Capt. Quick would have needed to know and analyze the vessel mix for each port on his list of

³⁵ Quick, Exh. GQ-5T at 9:5-7.

³⁶ Nielsen, Exh. JJN-1T at 2:13-14.

³⁷ Nielsen, TR. 275:4-12.

³⁸ Quick, Exh. GQ-5T at 13:19-20 n. 5, n. 8.

comparable ports to conclude whether the vessel mix was comparable to the Puget Sound. This analysis would have included Columbia River, which remained on Capt. Quick's list despite the fact that the Columbia River Pilots do not track vessel mix.³⁹

14. If PSP had attempted to provide the evidence necessary to establish port comparability based on vessel mix, such evidence would have necessarily included data (1) on the vessel mix in the Puget Sound, and (2) on the vessel mix in the ports that it claims are comparable. PSP provided no such evidence. On the contrary, it arbitrarily discarded ports as "not comparable." For instance, it excluded several ports because they handled "high tonnage cruise ships on a seasonal basis."⁴⁰ Yet, the Port of Seattle is one of the nation's busiest ports for handling high tonnage cruise ships on a seasonal basis.⁴¹ Without evidence, standards, methodology, or a level of significance identified as the basis for this comparison, this "comparability" factor devolves into pure subjectivity.

3. PSP also terms "comparable" all ports with "publicly available" financial data, but it is very selective in the ports for which it presents such data.

15. PSP at one point claims as "comparable" all ports for which "publicly available" financial data exists.⁴² But PSP omitted from its financial

³⁹ Nielsen, TR 275:4-12.

⁴⁰ Quick, Exh. GQ-5T at 13:19-20 n. 5, n. 8.

⁴¹ Moore, Exhs. MM-07(a)r, MM-07(b)r.

⁴² Carlson, Exh. IC-1T at 17:6-13 ("the only publicly available groups are . . .").

comparisons several ports for which financial data is available to the public but where the data appears not to support PSP’s income arguments. Ironically, PSP cites some of these same ports for other comparability purposes.

16. For instance, PSP does not include the Washington state licensed pilots at Grays Harbor. The Grays Harbor tariff was recently subject to review by the Commission.⁴³ It is also a Washington state licensed pilotage ground.⁴⁴ There is no rationale given for excluding Grays Harbor from the comparison of income data under the “public availability” criteria,⁴⁵ especially when it is later included in Capt. Carlson’s tariff comparisons in his rebuttal testimony.⁴⁶

17. PSP does not include the income and salary information for federally licensed pilots, including local Washington State Ferry masters who are pilots operating in the Puget Sound. The compensation agreements available for ferry pilots through collective bargaining are “publicly available” records.⁴⁷ In the Puget Sound these federal pilots are handling different types of ships but on the same waters under similar licensing. PSP is well acquainted with federal

⁴³ *In re Port of Grays Harbor*, Docket TP-190965, Memo (Dec. 19, 2019) (Staff’s recommendation that the tariff filing to become effective by operation of law by the Commission’s taking no action).

⁴⁴ Ch. 81.116 RCW; ch. 480-160 WAC.

⁴⁵ von Brandenfels, Exh. EVB-1T at 19:11-20:3 (“very few state pilot groups’ income is publicly available information”); Carlson, Exh. IC-1T at 17:5-22 (“there are only so many state pilot groups whose income per pilot is publicly available”).

⁴⁶ Carlson, Exh. IC-4Tr at 50:14-24.

⁴⁷ *See, e.g.*, Wash. State Office of Financial Management, Masters, Mates, and Pilots (MM&P) Mates (2019-21), available at <https://ofm.wa.gov/state-human-resources/labor-relations/collective-bargaining-agreements/masters-mates-and-pilots-mmp-mates-2019-21>.

licensed pilotage requirements, as it is a condition of state licensure,⁴⁸ and there is no rationale given for its exclusion from the comparison of income data under the “public availability” criteria.⁴⁹ Moreover, other pilotage grounds under federal licensure, notably Long Beach and Los Angeles, feature prominently in Capt. Carlson’s tariff comparisons.⁵⁰ If federal pilots are comparable in one pilotage ground, they should be comparable in another.

18. Nor has PSP included the Pacific Pilotage Authority, operating in British Columbia waters. Their financial data is also available to the public.⁵¹ PMSA noted the comparability of this pilotage ground since pilots in the Puget Sound and in British Columbia at times handle reciprocal vessel duties, including handling the same ships in the same trans-boundary waters.⁵² These B.C. ports are also included in Capt. Carlson’s tariff comparisons.⁵³ The financial reports for these pilots are demonstrative of the costs and values for pilotage applied to

⁴⁸ RCW 88.16.090(2)(a)(iii)(A); WAC 363-116-080(3) (“all applicants must provide a copy of his/her U.S. master license required by RCW 88.16.090 with a first class U.S. pilotage endorsement without tonnage or other restrictions on that U.S. master license to pilot in all waters of the pilotage district . . .”).

⁴⁹ von Brandenfels, Exh. EVB-1T at 19:11-20:3; Carlson, Exh. IC-1T at 17:5-22.

⁵⁰ Carlson, Exh. IC-4Tr at 48:1-50:24 (Capt. Carlson cites as comparable, for example, cases where federally licensed pilots in the Port of Los Angeles and Long Beach are handling the exact same vessels that, when calling in the Puget Sound, are being handled by state-licensed pilots); Moore, Exh. MM-1Tr at 3:17-18, 126:18-25 (noting Los Angeles and Long Beach pilots operate “exclusively under federal pilotage endorsements”).

⁵¹ 2019 Pacific Pilotage Authority Annual Report at 26-45, available at <https://www.ppa.gc.ca/sites/default/files/2020-07/PPA%202019%20Annual%20Report%20Eng%20FINAL.pdf>.

⁵² Moore, Exh. MM-1Tr 130:12-131:16.

⁵³ Carlson, Exh. IC-4Tr at 48:1-50:24.

these similar and identical vessels for the ports which everyone agrees are in the most direct competition with the Ports of Seattle and Tacoma.⁵⁴ There is no rationale given for why this data is excluded from the comparison of income data under the “public availability” criteria,⁵⁵ while the costs of calling on these ports are included in Capt. Carlson’s tariff comparisons in his rebuttal testimony.⁵⁶

19. The U.S. Coast Guard (USCG) annually reviews its pilotage rates on the Great Lakes, and in those reviews it publishes “financial data.”⁵⁷ PSP omits the Great Lakes pilotage districts from its evidence even though financial data and pilot compensation projections for 2019 and 2020 were publicly available in October 2019, before PSP filed its tariff proposal in this case.⁵⁸ In the most recent documents, the Great Lakes “target pilot compensation benchmark” for 2019 and 2020 was set at \$359,887 and \$367,085 per pilot, respectively.⁵⁹

20. The omission of Great Lakes’ pilot financial data occurs despite the fact that PSP’s briefing cites the very documents containing that data in detail. PSP uses the documents only to argue that the Commission should emulate the Great Lakes as a model that “considers the sufficiency of pilot income via a similar

⁵⁴ Leachman, Exh. RL-1T 14:17-16:19.

⁵⁵ von Brandenfels, Exh. EVB-1T at 19:11-20:3; Carlson, Exh. IC-1T at 17:5-22.

⁵⁶ Carlson, Exh. IC-4Tr at 48:1-50:24.

⁵⁷ See, e.g., Quick, Exh. GQ-7X.

⁵⁸ Quick, Exh. GQ-7X (citing Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology, 84 Fed. Reg. 58,099 (Oct. 30, 2019)).

⁵⁹ Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology, 84 Fed. Reg. 58,099 at 58,105 (Oct. 30, 2019).

comparability standard.”⁶⁰ But that argument relies exclusively on USCG’s 2016 ratemaking.⁶¹ In omitting later annual review documents, PSP creates a false impression regarding the ultimate methodology for ratemaking and the use of comparable ports’ data in setting rates in the Great Lakes. Of particular relevance, PSP failed to mention the USCG Final Rule adopted in 2018,⁶² which specifically considered the question of “Comparison with U.S. Pilotage Associations.”⁶³ Just as Staff in this proceeding has concluded,⁶⁴ USCG determined that engaging in financial comparisons was a futile exercise:

While we agree with the commenters that the final compensation information of some other U.S. pilots is publicly available, we are not, at this time, convinced that it is the best benchmark. We note that there are over 60 pilotage associations in the U.S., with huge variations in pay structure and levels. For example, in some of our research involving pilot compensation, we found that pilot compensation levels that ranged from a low of \$173,554 annually ^[46] to a high of \$758,922.^[47] Such a wide range does not provide sufficient information about the proper compensation of Great Lakes pilots on its own.

At this time, we do not have sufficient, reliable information regarding how the baseline average compensation levels of other U.S. pilotage associations are set, only information on the rate changes from year to year.

⁶⁰ PSP Initial Br. at ¶ 41.

⁶¹ PSP Initial Br. at n. 49. *See also* PSP Initial Testimony, Table of Authorities, (citing Great Lakes Pilotage Rates—2016 Annual Review and Revisions to Methodology, 81 Fed. Reg. 11,908 (Mar. 7, 2016)).

⁶² Great Lakes Pilotage Rates—2018 Annual Review and Revisions to Methodology, 83 Fed. Reg. 26,162 (June 5, 2018).

⁶³ *Id.*, at 26,167.

⁶⁴ Sevall, Exh. SS-1T at 15:10-11 (“Even assuming that those challenges could be overcome, without a financial audit for each district Staff cannot verify the comparability of the proffered districts.”).

4. PSP provides no analysis of potential comparability factors.

21. Even if PSP had offered a single set of comparable ports instead of numerous inconsistent lists, PSP fails to analyze the factors that would need to be scrutinized for a true comparison between pilotage grounds. As discussed above, PSP fails to analyze vessel mix and public availability of financial data factors. PSP also fails to account for other factors raised in its own testimony. For example, one major factor explicitly mentioned as the basis for port comparison is the value of safety practices, which Capt. Moreno cited as a reason for his move to the Puget Sound from Alaska.⁶⁵ Yet, PSP gave this factor no consideration.

22. Another relevant factor would be the duration and intensity of training programs, which vary widely between pilotage grounds. For instance, prior to being made a full pilot in the Port of Long Beach trainees will participate in up to 3,000 vessel moves, which at the current assignment level in Puget Sound would take pilots more than 20 years of work to match.⁶⁶ PSP presents no analysis of comparisons with respect to the intensity or duration of the pilot training program.

23. Navigational risk is another factor that PSP testimony raises. For income comparisons, PSP argues that the Commission should draw on “other state-

⁶⁵ Moreno, Exh. SM-1T at 3:6-21 (“... safety and reliability of this essential infrastructure was and still is paramount in my career here as a Puget Sound pilot and influenced my decision to come here significantly”).

⁶⁶ Moore, TR. 459:4-7.

regulated pilots who . . . carry similar risk.”⁶⁷ But PSP fails to analyze or quantify this risk, making any comparisons impossible.⁶⁸ If these risks are to be used for comparing navigational factors, it is critical to acknowledge the unique features of Puget Sound: until ships approach port, they travel over very wide and deep open water, making Puget Sound a pilotage ground truly unlike “any other North American ports” with the exception of British Columbia.⁶⁹ While PSP identified some navigational risks in the Puget Sound associated with “narrow waterways,”⁷⁰ these restrictions are rare and limited when compared with the more extreme restrictions in other waterways.⁷¹ In the absence of any analysis, this important area remains but another nebulous factor that cannot be used for comparability.

5. The entire notion of comparability fails.

24. Additional testimony presented by PSP fundamentally undermines the very concept of port comparability. For instance, attempting to apply the concept to the Columbia River and Puget Sound, Capt. Nielsen asserted many “similar”

⁶⁷ PSP Initial Br. at ¶ 31.

⁶⁸ Moreno, TR. 414:6-14; Sevall, TR. 659:13-24.

⁶⁹ Moore, Exh. MM-1Tr at 129-130.

⁷⁰ See Moreno, Exh. SM-2T at 6:10-11, 18-20 (“Limited Under Keel Clearance (UKC - the available depth of water under the vessel) is another factor that elevates risk in narrow waterways like the Blair” which Capt. Moreno viewed as “one of the narrowest and most difficult to transit in the Pilotage District.”).

⁷¹ Nielsen, TR. 276:12-16; Moore, TR. 456:23 - 458:20.

aspects of the two pilotage grounds.⁷² But in the end, the only physical similarity turned out to be the weather:

Q. So you've also talked about weather influences being very similar, right?

A. Yes.

Q. Okay. So that is the . . . actual similarity in the physical environments . . . between the Columbia River and the Puget Sound pilotage grounds, wouldn't you say?

A. Yes.

Q. Okay. And then would you agree that, you know, of all these common influences that makes the grounds similar, what it really boils down to, setting aside weather, is that the skill sets required of the pilots are similar to address the local conditions?

A. I would agree with that.⁷³

Thus, aside from general Pacific Northwest weather patterns, no similarities existed. Instead, the notion of "comparability" referred only to pilots' skills and training.⁷⁴ Similarly, according to Capt. Quick, the real basis for comparability is not the similarity of pilotage grounds or the vessel mix at all, but the similarity of base skills and the uniform nature of pilotage services everywhere.⁷⁵ PSP has presented no evidence or rationale for distinguishing between ports as comparable or not on this basis.

⁷² Nielsen, Exh. JJN-1T at 2-4.

⁷³ Nielsen, TR. 278:8-22 (edited slightly for clarity and brevity).

⁷⁴ *Id.*

⁷⁵ Quick, Exh. GQ-5T at 7:15-20 ("Pilots in the major Gulf and West coast ports of the United States have generally identical duties and responsibilities and often serve the same vessels as those entering other coastal ports. As I noted in my original testimony, state statutes creating compulsory pilotage systems have

B. The Puget Sound pilotage district has no shortage of pilots.

25. PSP argues incorrectly that a “pilot shortage” exists in the Puget Sound. PSP alleges that “Staff has . . . intrinsically imbedded pilot shortages into its implied pilot count” in the revenue requirement formula.⁷⁶ PSP complains that “PMSA refuses to acknowledge that PSP is severely understaffed,” that it suffers from a “severe pilot shortage,” and that PSP needs pilots in administrative roles to provide “safe pilotage service.”⁷⁷ This shortage is a fiction.

26. PSP first tries to leverage this fiction for substantially increased pilot income based on the need to “attract and retain” pilots in the Puget Sound.⁷⁸ Staff appropriately concluded that the evidence does not support PSP’s claims that it has difficulty attracting trainees and retaining pilots.⁷⁹ In fact, the Puget Sound training program has never been more populated with potential trainees.⁸⁰ Qualified pilot candidates’ demand for spots exceeds the BPC’s spots, leading to an extensive multi-year waiting list.⁸¹ An important factor contributing to the potential trainee pool are the over 2,000 captains, mates and pilots employed in

remarkably similar requirements and public policy goals. The General Maritime law applicable to the various duties of the pilot and the pilot’s relationship with the ship and shipowner is the same in all ports.”).

⁷⁶ PSP Initial Br. at ¶ 64.

⁷⁷ PSP Initial Br. at ¶ 99.

⁷⁸ PSP Initial Br. at ¶¶ 1, 31, 35, 41, 43.

⁷⁹ Staff Initial Brief at ¶ 46 n. 105.

⁸⁰ Moore, Exh. MM-1Tr at 68:4-69:25.

⁸¹ Royer, Exh. JR-13r.

the Puget Sound region in 2019.⁸² The 90th percentile of their annual wages was \$151,880 in 2019.⁸³ Staff's recommended DNI is 260 percent above even the highest-paid mariners' current salaries in the potential applicant pool.

27. The Puget Sound is in an enviable position, having attracted trainees from other parts of the U.S., including occasional transfers of pilots from other pilotage grounds.⁸⁴ With respect to a national pool, it is a fact that the USCG recently determined that pilot compensation of \$359,887 for 2019 and \$367,085 for 2020 was more than enough to “recruit and retain pilots” in the Great Lakes pilotage districts.⁸⁵

28. Finally, retirement age is another indicator of pilot retention: the data PSP provided in response to a bench request show several PSP pilots remain with PSP as long as they can, until the law mandates their retirement as state-licensed pilots at age 70.⁸⁶ This shows that PSP enjoys the maximum rate of retention allowed by law for these retiring members.

29. The notion of a Puget Sound pilot “shortage” also runs counter to the reality that the BPC controls all licensing factors: pilot training, testing, and licensing.

⁸² Ramirez, Exh. JCR-3r at 8 (“BLS - Captains, Mates, and Pilots of Water Vessels - Seattle-Tacoma-Bellevue [b]”).

⁸³ *Id.*

⁸⁴ Moreno, SM-10X at 8-9 (PSP Response to PMSA Data Requests 344 and 348); Moreno, TR. 412:6-19.

⁸⁵ Great Lakes Pilotage Rates—2020 Annual Review and Revisions to Methodology, 84 Fed. Reg. 58,099 at 58,105, 58,122 (Oct. 30, 2019).

⁸⁶ PSP Response to Bench Request No. 2; RCW 88.16.090(2)(a)(ii) (“A person is eligible to be licensed as a pilot or a pilot trainee if the person [is] under the age of seventy years”).

Just as the BPC must respect this Commission's exclusive authority over ratesetting, this Commission must respect the BPC's express authority over determining the appropriate number of pilots to train and license.⁸⁷ In this instance, the BPC's limits on the number of authorized pilots are precisely what protect PSP from competition, facilitating its pilotage monopoly. Flooding the market with state-licensed pilots would hardly help PSP's arguments for drastically increasing each pilot's compensation. No evidence exists of any license opening without a qualified, tested, and Board-approved candidate waiting to fill it. Thus, because the limitation of the number of pilots is a direct function of the State of Washington's deliberate actions to license pilots, no evidence of a "shortage" exists.

30. As discussed in PMSA's Initial Brief, the real causes of the vessel delays that PSP argues are the main indicators of a "shortage" are internal PSP policies regarding its rotation and watchkeeping, including when PSP assigns on-watch pilots to a variety of meetings instead of to vessels and PSP's lack of management of its callback/comp day practices.⁸⁸ For instance, when there are 50 licensed pilots, but on one day PSP made only 11 pilots available and on-watch to move vessels, any delays or callbacks that result are not a function of a

⁸⁷ See Staff Initial Br. at ¶¶ 6, 10 n. 28 (cautioning against the making "policy determinations that exceed [the Commission's] statutory authority and intrude on the Board's functions").

⁸⁸ PMSA Initial Br. at ¶¶ 61-67.

“shortage” of pilots.⁸⁹ Rather, PSP’s staffing rules, which allowed 39 pilots to do something other than pilot a vessel that day, resulted in the delays and callbacks.

31. No matter how vigorously PSP objects to this fact,⁹⁰ these staffing issues are due to PSP’s management choices, as shown in detailed evidence from PSP itself.⁹¹ A queuing study, as suggested by Staff, would likely help PSP explore options to improve management of staffing.⁹² PSP should certainly not be rewarded for inefficient management with compensation beyond that provided by the Staff-recommended revenue requirement for additional “implied pilots” who do not exist.

32. In addition, if a “shortage” did exist, PSP’s proposal to lower its workload and require a higher number of “implied pilots” would make the shortage more acute. By definition, an attempt to lower the number of assignments each pilot is expected to perform per year would increase the number of pilots necessary to cover all assignments and, therefore, exacerbate the impacts of a “shortage” of pilots.⁹³ PSP contemplates no improvement in management or efficiency as even possible. Instead, it seeks the adoption of a new, unprecedented low expectation of 118 “assignments” per year.⁹⁴ The BPC’s Target Assignment Level (TAL), has

⁸⁹ See PMSA Initial Br. at ¶¶ 61-67 and evidence cited therein.

⁹⁰ See, e.g., PSP Initial Br. at ¶ 97.

⁹¹ See PMSA Initial Br. at ¶¶ 61-62 and evidence cited therein.

⁹² PMSA Initial Br. at ¶ 79.

⁹³ PSP Initial Br. at ¶¶ 62, 83.

⁹⁴ PSP Initial Br. at ¶¶ 62, 83.

been at 145 since 2010,⁹⁵ and the historic Average Assignment Level (AAL), has ranged from 134 to 162 from 2005 to present.⁹⁶ Staff correctly assessed this issue as firmly within the jurisdiction of the BPC; PMSA joins Staff in its call to reject PSP's attempt to circumvent the BPC's decision on the TAL through ratesetting.⁹⁷

C. PSP's evidence validates PMSA's concerns regarding Puget Sound port competitiveness.

33. In discussing the report by Robert Leachman that PSP produced on rebuttal, PSP's Initial Brief makes a strong case for the very same reality that PMSA's evidence has pointed to: the economic competitiveness of Puget Sound ports is fragile and precarious as ports face numerous costs and taxes that are beyond their control.⁹⁸ Dr. Leachman posits that the Puget Sound ports are particularly vulnerable to competition because the Harbor Maintenance Tax assessed on all U.S. ports and higher U.S. rail rates have resulted in a significant loss of intermodal container traffic to B.C. ports that do not have these same costs.⁹⁹ Dr. Leachman's model logically concludes that ports become less competitive as their costs increase relative to other ports. His model is limited, however, in that it captures only downstream distributed per-unit cost impacts on cargo

⁹⁵ Carlson, Exh. IC-32X at 8.

⁹⁶ Moore, Exh. MM-20r, Exh. MM-1Tr at 38:1-12 (Figure T. Average Annual Assignments Per Pilot (2005-2019)). *See also* Sevall, Exh. SS-1T at 8:18; Exh. SS-2, Sch. 2.1., line 8.

⁹⁷ Staff Initial Br. at ¶ 11.

⁹⁸ PSP Initial Br. at ¶¶ 141-145.

⁹⁹ PSP Initial Br. at ¶¶ 142-143.

owners in the containerized trades—customers of only a certain segment of pilotage customers.¹⁰⁰ It is not broadly applicable to those directly affected by pilotage tariffs, i.e., the vessels. As already discussed in PMSA’s Initial Brief, Dr. Leachman’s analysis in no way proves ratepayers are insensitive to tariff changes.¹⁰¹ Nevertheless, his analysis, as framed in PSP’s Initial Brief, does show generally that higher costs jeopardize port competitiveness and exacerbate some of the market share challenges that Puget Sound ports, in particular, already face.

34. PSP’s own evidence also shows that its proposed tariff increases exceed other charges that PSP believes have already significantly impacted port competitiveness. PSP has argued that a \$6,300 increase in a port dockage charge¹⁰² “significantly contributes to a lack of port competitiveness.”¹⁰³ And it estimates its proposed tariff increase would theoretically result in a cost increase of \$17,680 per 13,000 TEU vessel call.¹⁰⁴ PSP’s tariff proposal results in a cost increase 280 percent higher than PSP’s own example of another cost

¹⁰⁰ Leachman, Exh. RL-1T at 22-124.

¹⁰¹ PMSA Initial Br. at ¶ 75.

¹⁰² Carlson, Exh. IC-22 at 3 (Tacoma dockage charge increase from 2015 to 2020: \$27,307-\$21,011=\$6,296). Note that while dockage is a charge against vessels; wharfage, demurrage and crane charges shown on the same exhibit are charges against terminals and cargo containers, not vessels. Moreover, the tariffs cited are applicable only in those limited circumstances where vessels are calling at terminals not subject to a lease, and all container terminals are leased.

¹⁰³ PSP Initial Br. at ¶ 140 (citing Carlson, Exh. IC-22).

¹⁰⁴ PSP Initial Br. at ¶ 144 (quoting Leachman, Exh. RL-1T at 25:4-8, estimating the cost of PSP’s proposed tariff increase at approximately \$1.36 per TEU); Carlson, Exh. IC-4Tr at 47:14 (using a container ship model for comparability for “a 13,000 TEU Container ship”).

increase that, by PSP's own terms, is a significant contributor to a lack of port competitiveness. Such increases are not merely theoretical, as PSP's working papers demonstrate how significant the proposed pilotage tariff increases would also be for a small container ship port call rotation: for instance one vessel's increases would total \$8,328.23.¹⁰⁵

35. Under the Pilotage Act, port competitiveness is an important consideration in pilotage tariffs.¹⁰⁶ State actions to regulate pilotage, including the determination of pilotage tariffs, must not “place in jeopardy Washington's position as an able competitor for waterborne commerce from other ports and nations of the world, but rather to continue to develop and encourage such commerce.”¹⁰⁷ As PSP's Initial Brief and evidence acknowledge, Puget Sound ports are already in jeopardy. In ratemaking, the Commission must be careful not to exacerbate an already precarious situation.

D. PSP presents no evidence countering expert analysis showing that the current tariff provides fair and reasonable income.

36. RCW 81.16.030(5) requires the moving party, here PSP, to show that the current tariff rates are not fair, just, reasonable, and sufficient. However, only one witness in this proceeding analyzed whether the current tariff meets this

¹⁰⁵ Burton, Exh. WTB-13 at lines 117, 125, 146.

¹⁰⁶ *Wash. Utils. & Transp. Comm'n v. Puget Sound Pilots*, Docket TP-190976, Order No. 08 at ¶22 (Aug. 7, 2020) (The Washington Pilotage Act is concerned not only with protecting loss of life and property, but preserving “Washington's position as an able competitor for waterborne commerce . . .”).

¹⁰⁷ RCW 88.16.005.

standard with respect to the net income and equity return to PSP pilots.¹⁰⁸ That witness, John Ramirez, explained that he “was retained to analyze whether the current PSP tariff was fair and reasonable—not whether the proposed PSP tariff was fair and reasonable.”¹⁰⁹ PSP itself offered no evidence on whether the distributions received by pilots under the current tariff were not fair, just, reasonable or sufficient. PSP then criticizes Mr. Ramirez by mischaracterizing his testimony as offering an alternative, prospective methodology for ratemaking analysis.¹¹⁰

37. Mr. Ramirez’s area of expertise is valuation, including reasonableness of compensation analysis; he does not purport to have expertise in the area of ratemaking.¹¹¹ He never purported to propose an alternative rate formula, as PSP alleges; rather, he provided a set of “reasonableness of compensation analyses.”¹¹² His sole focus was evaluating whether the current tariff is fair, just, reasonable, and sufficient with respect to pilot compensation for services and pilot profitability.¹¹³ Under the current tariff, by Mr. Ramirez’s analysis, PSP members earn healthy returns on minimal investments with very minor risks as a result of the PSP by-laws and capital structure.¹¹⁴ Mr. Ramirez’s

¹⁰⁸ Ramirez, Exh. JCR-1Tr.

¹⁰⁹ Ramirez, Exh. JCR-8X (PMSA Response to PSP Data Request 100).

¹¹⁰ PSP Initial Br. at ¶¶ 14-21.

¹¹¹ Ramirez, Exh. JCR-1Tr at 1:13-2:3.

¹¹² Ramirez, Exh. JCR-1Tr at 1:22-23, 4:15-18.

¹¹³ *Id.*

¹¹⁴ Ramirez, Exh. JCR-3r, Schedule B (“Puget Sound Pilots Rates of Return”; “Rate of Return of Equity 62%”).

analysis reinforces Staff's use of the historic pilot compensation in determining a reasonable TDNI calculation in this proceeding.

E. PSP's over-earnings "problem" is not a problem.

38. PSP argues that basing a TDNI on the actual number of existing pilot licensees would create a "problem" because, if the number of pilots decreases, then "each of the remaining pilots would be expected to work more, and would each earn additional income as a result."¹¹⁵ Pilots making more money would be a "problem" according to PSP because, "in a subsequent rate proceeding, the tariff *might* be reduced to ensure each pilot earned only the targeted amount"; "the same problem" might exist with other scenarios where "[i]ncome per pilot would justifiably increase" because "this methodology *could* unfairly require a reduction in rates in future rate proceedings."¹¹⁶

39. Pilots earning higher revenues when they complete more piloting jobs is hardly a problem. Under every conceivable tariff, including both the Staff recommendation and PSP's proposal, when pilots perform more assignments, they earn more revenues. PSP's concern about what might possibly occur in some potential future rate proceeding is also unjustified under the Staff's proposed revenue requirement methodology, which smooths out single-year spikes or unintended changes to annual pilot DNI by including it in a historical five-year average. The "problem" of a spike in revenues based on assignment

¹¹⁵ PSP Initial Br. at ¶ 56.

¹¹⁶ *Id.* (emphasis added)

activity would also be mitigated by the PMSA request to use Revenue Per Assignment (RPA) as a performance metric;¹¹⁷ if pilots were earning more because they were doing more work, an RPA analysis would demonstrate and isolate such variables.

F. PSP’s inconsistent presentation of data undermines its arguments on workload.

40. PSP submitted “lengthy and complex spreadsheets,” Exhibit WTB-11, as part of its initial filing.¹¹⁸ Each included a column listing “Job Hours” for the 2018-19 Test Year.¹¹⁹ PSP relied on this “Job Hours” dataset when formulating its rate proposal. Staff relied on the same dataset when formulating its own recommendation.¹²⁰ PMSA relied on the same dataset in evaluating pilot workloads.¹²¹ Yet PSP attacked PMSA for relying on PSP’s own Job Hours data, calling it “wildly significantly inaccurate.”¹²² If the spreadsheets were an accurate representation of billable pilot workload for the creation of the tariff when analyzed by PSP and Staff, then PSP cannot credibly argue that they are inaccurate when analyzed by PMSA.

¹¹⁷ PMSA Initial Br. at ¶¶ 19-21.

¹¹⁸ Burton, Exh. WTB-1T at 15:3-4.

¹¹⁹ Burton, Exh. WTB-11, Exh. WTB-12, Exh. WTB-13.

¹²⁰ Sevall, Exh. SS-3, Schedule 3.6 (“Staff Test of Exhibit WTB-11”).

¹²¹ Moore, Exh. MM-1Tr 25:2-9, 26:22-27, 39:13-40:18, 137:13-138:8; Exh. MM-14r; Exh. MM-15; Exh. MM-21r; Exh. MM-42T 16:20-18:5, 28:23-29:11; Exh. MM-45.

¹²² PSP Initial Br. at ¶ 102.

41. To attack PMSA’s analysis of the Job Hours data in Exhibit WTB-11, PSP relied on data contained in another spreadsheet, Exhibit IC-40X.¹²³ PSP did not produce Exhibit IC-40X until August 5, 2020, many months after the submission of initial written testimony and only one week before the hearing.¹²⁴ And this new spreadsheet does not show that the data previously submitted is “inaccurate.” Instead, PSP’s argument seems to be that an “assignment” ends at “check-in time” (column M in Exhibit IC-40X), not at “completion time” (column K in Exhibit IC-40X).¹²⁵ That makes the assignment longer than the “Job Hours” shown in Exhibit WTB-11. But using the “completion time” column in Exhibit IC-40X corroborates the “Job Hours” in Exhibit WTB-11.¹²⁶

42. Where the data exists in two different forms, it is inconsistent. But the inconsistency here is caused by PSP’s arbitrarily adding standby and other times to the job completion time in a new definition of “assignment,” without being transparent about doing so. At the same time, PSP continues to advocate for bridge hours as the basis for its proposed new tariff. This problem also besets the PSP data at Exhibit IC-39X, where PSP could not identify or defend

¹²³ PSP Initial Br. at ¶102 (criticizing PMSA’s use of Exhibit WTB-11 data based upon “review of data set forth in Exhibit IC-40X”).

¹²⁴ Carlson, Exh. IC-42X at 47.

¹²⁵ PSP Initial Br. at ¶102, fn. 129.

¹²⁶ Also, Exhibit IC-40X, too, contains individual pilot bridge hours per assignment. Other than a handful of cable-laying operation assignments and a towing evolution early in 2018 outside of the test year, there is no listing of hundreds of assignments exceeding 14 hours, as claimed by PSP. PSP Initial Br. at ¶102.

similar data discrepancies regarding assignments and job durations.¹²⁷ In the end, whether based on Exhibit IC-40X or Exhibit WTB-11, PMSA’s analysis of actual job completion or bridge hour time is completely accurate.

43. PSP’s application of contradictory standards and definitions in reviewing its own data—even calling its own data “inaccurate”—reflects an overall lack of coherent treatment of its workload and assignment data. For example, PSPs testimony often references pilot availability, but when PMSA asked in a variety of ways and contexts for the disclosure of datasets documenting pilot availability, PSP objected strenuously and protested that no such dataset existed.¹²⁸ Without access to a single, consistent dataset from PSP, the Commission, Staff and ratepayers are left in an untenable position. PSP is the only entity with primary source data on its workload. To facilitate this and future ratesetting, regulators and the public need to be confident that the data disclosed is accurate, consistent, comprehensive, and not manipulated. PSP’s hodge-podge of inconsistent arguments, definitional games, and last-minute production of core documents in this proceeding is facially inconsistent with a fact-driven and evidence-based ratemaking process, and it should be rebuked by the Commission.

¹²⁷ Carlson, Exh. IC-39X; Carlson, TR. 363:23 - 364:21, 365:5 - 367:8.

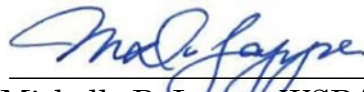
¹²⁸ Carlson, Exh. IC-42X at 38 (“To identify those who are on-duty less those who are unavailable at any one time, PSP would have to review multiple daily records and compile a new spreadsheet in which the number is calculated on a daily basis.”).

IV. CONCLUSION

44. PMSA continues to support Staff's recommendation with the adjustments and clarifications listed in PMSA's Initial Brief, and with the further clarifications in Section II above. PMSA also joins Staff in calling on the Commission to reject the PSP proposed tariff. PSP's proposal is based on incomplete, contradictory, and, in several instances, wholly lacking evidence, and reflects improper attempts to circumvent the BPC's legislatively mandated area of authority through this ratesetting proceeding. It would result in a windfall to pilots through unfair and unreasonable costs to ratepayers, in addition to amplifying incentives to avoid efficiency and management improvements.

Respectfully submitted this 25th day of September, 2020.

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