

**BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-220513

**REPLY BRIEF OF  
PACIFIC MERCHANT SHIPPING ASSOCIATION**

May 12, 2023

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## I. INTRODUCTION

1       The Commission should reject the tariff sheets filed by Puget Sound Pilots  
(PSP). The final order in this case should instead comport with the evidence and  
recommendations of Commission Staff, the Pacific Merchant Shipping Association  
(PMSA), and TOTE Maritime (TOTE).

## II. THE COMMISSION SHOULD APPROVE STAFF’S RECOMMENDATIONS WITH PMSA’S RECOMMENDED REVISIONS

2       The Commission should adopt Staff’s recommendations for a revised tariff  
subject to PMSA’s suggested revisions and clarifications as identified in PMSA’s  
initial brief and in Capt. Moore’s testimony. PMSA’s revisions concern pilot DNI,<sup>1</sup>  
the number of pilots,<sup>2</sup> inclusion of medical insurance payments to DNI,<sup>3</sup>  
transportation expenses,<sup>4</sup> certain insurance premiums,<sup>5</sup> and a pilot delay penalty, a  
DEI program, cost-sharing incentives, and pilot boat surcharges.<sup>6</sup>

3       With respect to PSP’s proposed COLA adjustment mechanism, PMSA agrees  
with Staff that the Commission should not adopt an open-ended authority for  
across-the-board rate increases without compliance filings.<sup>7</sup> Staff’s brief has  
clarified its support for a COLA mechanism and appropriately recommends that the  
Commission only “authorize PSP to make a compliance filing” applying the COLA to

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<sup>1</sup> PMSA Initial Br. at ¶¶ 15-25.

<sup>2</sup> *Id.* at ¶¶ 26-44.

<sup>3</sup> *Id.* at ¶¶ 45-51.

<sup>4</sup> *Id.* at ¶¶ 61-64.

<sup>5</sup> *Id.* at ¶¶ 74-75.

<sup>6</sup> Moore, Exh. MM-1T at 271:4–278:12, 279:26–283:14.

<sup>7</sup> See PSP Revised Appendix B, “Automatic Tariff Adjusters: 3. Annual Cost-of-Living Adjuster,” at 16.

only “specific expenses.”<sup>8</sup> This addresses PMSA’s concerns<sup>9</sup> that the COLA should be limited to the traditional basket of goods, such as office and staff expenses, while excluding expenses such as fuel that are not correlated with local CPI and excluding all payments to pilots (including retirement, medical insurance, and transportation). Given PSP’s already excessive, unreasonable, and unnecessary 53% increase in spending since 2018 to provide essentially the same level of service,<sup>10</sup> the COLA should also exclude expenses that are already excessive such as PSP’s legal and consulting expenses.

4 Any COLA mechanism must also be finite in duration. If granted, this compliance filing authority should be limited to the duration of the tariff period. For instance, if the Commission adopts PMSA’s proposed three-year rate period,<sup>11</sup> then the Commission should limit COLA compliance filings to those three years. The statutory multi-year plan limit of 48 months applicable to other UTC-regulated monopoly service providers<sup>12</sup> should serve as the maximum duration of any COLA authority here.

5 To avoid any confusion, we request that the Order independently address and clarify the COLA for expenses separate and apart from any cost-of-living adjustment for DNI. As noted in PMSA testimony, because the rate design already

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<sup>8</sup> Staff Initial Br. at ¶¶ 71-72.

<sup>9</sup> Moore, Exh. MM-63T at 21:22–22:4.

<sup>10</sup> PMSA Initial Br. at ¶ 60.

<sup>11</sup> Moore, Exh. MM-1T at 17:7-9.

<sup>12</sup> RCW 80.04.250(3).

includes tonnage as a rate factor and vessel sizes are on the increase,<sup>13</sup> pilot revenues already include a natural growth factor and should only be imposed at a rate of one-half of expected rate of inflation.<sup>14</sup>

### **III. PSP HAS FAILED TO PROVE THAT THE CURRENT TARIFF IS NOT FAIR, JUST, REASONABLE, AND SUFFICIENT**

6 PSP has not carried its burden of proof in this case. PSP relies on testimony and evidence that is largely irrelevant to the formula factors established by the Commission. PSP introduces novel legal theories espoused by non-expert and self-interested counsel. PSP also advocates for standards of review that depart from the well-established application of the statutory “fair, just, reasonable, and sufficient” requirement. As presented in its brief, none of PSP’s theories and proposed standards are supported by any rate-making laws.

#### **A. The Commission’s regulations and Order 09 create a presumptively fair, just, reasonable, and sufficient tariff for presumptively safe pilotage services.**

7 The Commission has adopted rules for a comprehensive process. In the Final Order (Order 09) of the initial rate case, the Commission established legal foundations for the application of its legal standards of review and rate-setting methodologies. The application of these rules and Order 09 will yield a tariff that funds “the provision of pilotage services.”<sup>15</sup> Given the weight of this evidence under

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<sup>13</sup> Eriksen, Exh. KAE-1T at 24:12-31:11.

<sup>14</sup> Moore, Exh. MM-1T at 18:10-25.

<sup>15</sup> RCW 81.116.020(1) (“The commission shall establish in tariffs the rates for pilotage services provided under chapter 88.16 RCW.”); RCW 81.116.020(3) (“The commission shall ensure that the tariffs provide rates that are fair, just, reasonable, and sufficient for the provision of pilotage services.”).

the legal standards of review, the tariff outcome is presumptively fair, just, reasonable, and sufficient.

8 The Commission has also established that it will respect the administration of the Pilotage Act by the BPC.<sup>16</sup> As such, the Commission must presume that the provision of a state-licensed pilotage service is competently licensed, trained, and enforced by the BPC. It would be illogical to start from assumptions that (1) the BPC has failed in regulating its licensees and (2) such a failure would need to be remedied somehow through increased tariffs. If PSP seeks to rebut these presumptions, it must prove the facts to do so; it has failed to prove them here.

**B. PSP has proceeded in a manner inconsistent with the formula adopted in Order 09.**

9 In Order 09 of the initial rate case, the Commission adopted Staff's recommendations for several simple and unambiguous formulas to follow in pilotage rate cases. In that case, PSP agreed with the main formula and confirmed that "Staff's methodology is the 'generally accepted method of determining pilotage rates nationally.'"<sup>17</sup> While PSP disagreed with Staff on certain DNI and expense inputs in the prior rate case,<sup>18</sup> it never challenged the final formula as adopted and applied.

10 Yet, as evident in its brief, PSP has chosen to ignore the Commission's formulas in this case. PSP never applies, discusses, or demonstrates the calculation of the formula. And PSP treats the inputs for the Commission's established formulas as

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<sup>16</sup> TP-190976, Order 09 at ¶¶ 40-42.

<sup>17</sup> *Id.* at ¶ 62.

<sup>18</sup> *Id.*

merely a “secondary issue.”<sup>19</sup> Furthermore, PSP never provided any of the required WAC 480-07-525(4)(s) workpapers to calculate any proposed alternative formulas or rate-making methodologies.

11        These omissions are not mere oversight. For example, PSP objected to use of the average assignment level (AAL) formula (PSP claims it “improper for the UTC [to] set the rates on a formula that may or may not align with the BPC’s robust understanding of the needs of the pilotage system”),<sup>20</sup> and PSP also objected to the calculation of TDNI (“ . . . because averages and inflation alone should not determine pilot earnings. The commission does not recognize averaging income or using inflation-adjusted costs for rate making purposes.”).<sup>21</sup> In other words, PSP objects to the exact types of calculations and methodologies adopted by the Commission in Order 09 for AAL and TDNI.

12        The Commission’s rules and application of its formulas create a clear template for presenting an efficient and effective rate case. Unfortunately, PSP has neither followed these rules nor applied the Commission’s previously adopted methodologies. It has instead submitted a filing that is unnecessarily complex, irrelevant, and expansive.

13        Ironically, one of PSP’s justifications for abandoning and refusing to implement these established formulas is its advocacy for the creation of new formulaic

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<sup>19</sup> *Id.* at ¶ 6 (treating “[m]ultiple expense items that are still contested by the parties” as a “secondary issue”).

<sup>20</sup> Carlson, Exh. IC-8T at 21:9-11.

<sup>21</sup> Burton, Exh. WTB-8T at 30:8-16.



adjusters. PSP argues “that the use of well-crafted formulaic automatic adjusters is good public policy, generates consistently fair, just, reasonable, and sufficient rates that respond to appropriate economic and other inputs and dramatically reduces the need for expensive, time-consuming contested general rate proceedings.”<sup>22</sup>

These same policy goals are precisely what the formulas and methodologies adopted in Order 09 were designed to achieve. PSP’s decision to abandon those formulas and methodologies undermines its professed interest in these goals. By abandoning the established formulas and methodologies, PSP has guaranteed a vastly more “expensive, time-consuming contested general rate proceeding.”<sup>23</sup>

14 Similarly, in its criticisms of Staff and PMSA, PSP’s brief also confirms that the broad scope of the PSP filing was unnecessary. PSP complains that Staff “performed little to no analysis of PSP’s filings, presented only a very modest level of written testimony and simply ignored most of the major issues [asserted by PSP] in this proceeding.”<sup>24</sup> And, of PMSA, PSP acknowledges that “[i]n sharp contrast to PSP’s robust evidentiary record that includes over 800 pages of written testimony from 26 witnesses and over 240 exhibits, PMSA submitted substantive testimony on behalf of just four witnesses based upon the very same arguments that largely prevailed in Order 09.”<sup>25</sup> Both these observations highlight that PSP alone has proceeded in a manner contrary to the “very same arguments that largely prevailed” in the prior

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<sup>22</sup> PSP Initial Br. at ¶ 97.

<sup>23</sup> *See id.* at ¶ 97.

<sup>24</sup> *Id.* at ¶ 4.

<sup>25</sup> *Id.* at ¶ 3.

rate case. PSP could have proceeded more effectively by following Order 09, which would have required “only a very modest level of written testimony.”

**C. PSP’s arguments for its “Five Primary Issues” are unproven, irrelevant, inconsistent, and deficient.**

15 PSP asserts that “this case involves five primary issues.”<sup>26</sup> PMSA disagrees with PSP’s framing of the issues in this case, but nonetheless addresses them here. Upon review, none of PSP’s issues support the tariff increases it seeks.

**1. The Commission’s application of the legal standards of “fair, just, reasonable, and sufficient” are clear and effective.**

16 When the Legislature moved the authority for pilotage monopoly rate-setting to the Commission, it provided that “[t]he commission shall establish in tariffs the rates for pilotage services provided under chapter 88.16 RCW” and “ensure that the tariffs provide rates that are fair, just reasonable, and sufficient for the provision of pilotage services.”<sup>27</sup> These baseline legal standards—“fair, just, reasonable, and sufficient”—are terms of art in the field of economic regulation of monopoly enterprises and typical for “any general rate proceeding.”<sup>28</sup>

17 As applied to pilotage, rates must be *fair* to pilotage ratepayer customers and to PSP and its member pilots; *just* as based solely on the record developed in a rate proceeding; *reasonable* in light of the range of possible outcomes supported by the

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<sup>26</sup> *Id.* at ¶ 5.

<sup>27</sup> RCW 81.116.020(3).

<sup>28</sup> TP-190976, Order 09 at ¶ 43 (citing *WUTC v. Avista Corp., d/b/a Avista Utils.*, Dockets UE-160227 and UG-160228, Order 06 ¶ 79 (Dec. 15, 2016)).

evidence; and, *sufficient* to attract and retain pilots to perform essential pilotage service in the Puget Sound pilotage district.<sup>29</sup>

18 But PSP rebukes the Commission’s application of these baseline legal standards and argues the “ratesetting standard in the pilotage context should be construed to embrace maximizing the accident-prevention capability of the compulsory pilot system.”<sup>30</sup> PSP does not—and cannot—cite a single case for such an interpretation of the baseline legal standards in this case.

19 PSP’s proposed alternative legal standard is unnecessary in light of the statute’s plain language and the statutory scheme. As stated in Order 09, safety “issues fall squarely within the BPC’s purview.”<sup>31</sup> In contrast, the Commission relies on the principles of cost causation to set a tariff that compensates for providing pilotage services. Therefore, the actual costs to PSP of complying with BPC’s safety rules and policies are the formula factors included in a revenue requirement. Since the costs of the BPC’s implementation of state policies that impact pilotage will necessarily, and by design, be reflected in a tariff that is set using cost-causation principles, there is no defect here to correct. Because these costs are addressed as questions of fact under the current Commission methodology, it is unnecessary to create a new standard to capture these same costs again as a matter of law.

20 If the law or government policies change in such a significant manner that they impact the costs of providing pilotage services, then PSP should present evidence of

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<sup>29</sup> *Id.*

<sup>30</sup> PSP Initial Br., Section II.C., at ¶ 38.

<sup>31</sup> TP-190976, Order 09 at ¶ 86. *See also* TP-220513, Order 06 at ¶¶ 20-24.

how the costs have changed and apply them to the formulas that inform the revenue requirements. PSP has presented no such evidence.

21        Lastly, PSP witnesses objected to the Commission’s use of the term “fair,” claiming that the state-licensed pilot monopoly should not be treated like other monopolies,<sup>32</sup> and to the Commission’s application of the term “just,” claiming that DNI reductions that are not the result of an “emergency situation are not ‘just.’”<sup>33</sup> Neither the witnesses nor PSP’s briefing cites legal authority in support of these positions. As PSP’s brief did not apply these legal standards to this case, the Commission should find that PSP has waived these arguments.

**2. The Commission does not set rates for a monopoly based on its customers’ profits or losses.**

22        The profitability of ratepayers is irrelevant to this rate case. As explained in Order 09,<sup>34</sup>

... we agree with Staff and PMSA that [ ] the profitability of larger vessels should not justify imposing greater costs on those vessels. As staff witness Sevall explains, Staff did not impose additional costs on larger vessels in light of their greater profitability because doing so “goes against one of the core principles in regulated rate setting.” It is instead appropriate to charge vessels on the principle of cost causation.

23        PSP does not—and cannot—cite a single case to support any theory undermining the core principles of regulated rate setting as described in Order 09. Because of the clear and unambiguous position of the Commission, and the absence of any legal basis for PSP’s claims to the contrary, this issue is wholly superfluous.

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<sup>32</sup> Diamond, Exh. CLD-1T at 32:16–36:20.

<sup>33</sup> Lough, Exh. DL-26T at 1:25–2:12. *See also* Lough, TR. at 513:8-25.

<sup>34</sup> TP-190976, Order 09 at ¶ 362.

24 Nor would the facts support increasing tariffs on this basis. First, PSP’s evidence is from 2021, which the pilots themselves recognized as anomalous due to the pandemic. Second, PSP witness Eriksen admits that the container vessel profit numbers he cited reflected a temporary situation and have changed significantly since the filing of his testimony.<sup>35</sup> He also acknowledged that vessel rates are now lower than pre-COVID rates.<sup>36</sup> Third, PSP cannot explain why financial metrics from only certain ratepayers (such as container ship customers) should control while those from other ratepayers (such as cruise ship customers that suffered unprecedented pandemic-induced losses) should be ignored.<sup>37</sup>

25 Finally, PSP incorrectly claims that there is no need for a multi-year phase-in of rate increases or concern for “rate shock.”<sup>38</sup> PSP asserts that pilotage is “only an incidental component of a minor category of an oceangoing voyage for a cargo carrier.”<sup>39</sup> But the purported source for this claim, *Maritime Economics*, states the opposite: “port-related charges represent a major component in voyage costs.”<sup>40</sup>

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<sup>35</sup> Eriksen, Exh. KAE-7X at 7-11, 15-16; Eriksen, TR. at 770:5-9.

<sup>36</sup> Eriksen, Exh. KAE-7X at 15-16.

<sup>37</sup> Moore, Exh. MM-1T at 165:19-24 (“While container carrier vessels were benefitting from the unprecedented surge in cargo demand driven by a shift in global consumer spending patterns to goods and away from travel and services, the cruise industry was being decimated by COVID, laying up ships, taking huge annual losses, and sitting idly by as the leisure travel economy came to a virtual standstill.”); *see also* Public Comment Letter of CLIA at 2-3 (Apr. 13, 2023) (“Any suggestion that cruise lines experienced profitability and demand for oceangoing vessel services during the pandemic is inaccurate.”).

<sup>38</sup> PSP Initial Br. at ¶¶ 39-41.

<sup>39</sup> Eriksen, Exh. KAE-1T at 41:1-7.

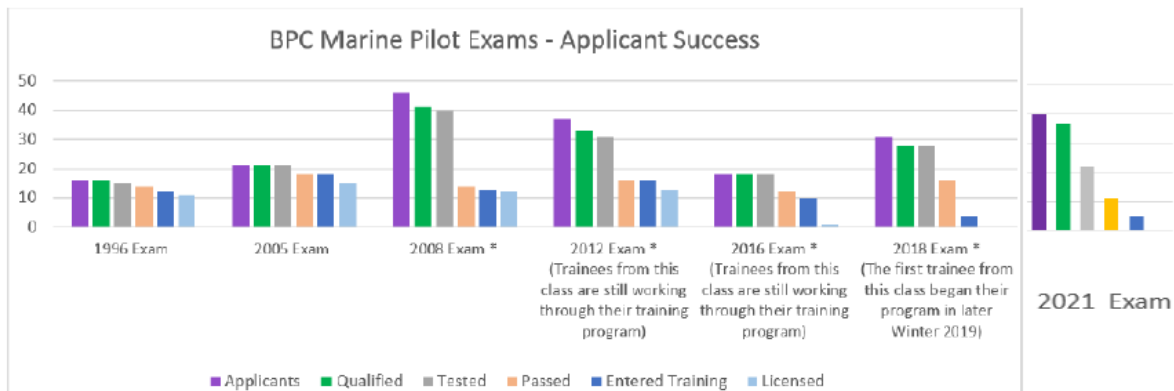
<sup>40</sup> Eriksen, Exh. KAE-9X at 36 (*Maritime Economics* at 235).

**3. PSP attracts ample qualified candidates and has not shown that higher pay would attract safer or more highly diversified trainees.**

26 PSP has not established any of its claims with respect to the attraction of pilot trainees. It is not suffering for a lack of qualified candidates for examination, training, or licensure. PSP has also failed to demonstrate any deficiencies in the quality of its applicants, trainees, or pilots.

27 PSP’s own anticipated growth of the pilotage corps contradicts PSP’s claim of a lack of attractiveness. PSP has repeatedly asserted that the number of pilots will increase to 56 despite alleging its net income is “dead last” on the West Coast.<sup>41</sup> If PSP is growing its ranks while allegedly paying pilots less than other pilotage grounds it analyzed,<sup>42</sup> then this only confirms that pilot trainees are still attracted to the Puget Sound independent of relative compensation when compared to other pilotage grounds and independent of short-term changes to DNI.

28 The 2021 BPC trainee examination confirmed the Puget Sound’s continued attractiveness for new applicants. Held after the adoption of the current tariff by



\* Note: A Federal Pilotage Endorsement for the area was no longer required for exam qualification beginning with the 2008 Exam

**FIGURE M**

<sup>41</sup> Bendixen, Exh. SB-1T at 5:16-17.  
<sup>42</sup> Lough, Exh. DL-26T at 4:1-14.

the Commission and after the reduced income in 2020, the exam attracted more qualified applicants than the two examinations held prior to the adoption of the current tariff.<sup>43</sup>

29        Though PSP claims that it cannot compete in a national pool of trainee candidates due to low net income, it provides no evidence in support of this claim. While PSP's compensation witness, Mr. Lough, claimed that PSP is at a disadvantage competing for trainees in a national pool of trainee candidates, he admitted he had not analyzed a national candidate pool.<sup>44</sup> Nor had he analyzed state-level employment and compensation statistics for pilot candidates.<sup>45</sup> Mr. Lough also admitted that he had not analyzed the Seattle-Tacoma metropolitan region's pilot candidate pool.<sup>46</sup> And his testimony regarding pilot candidate compensation in the Seattle-Tacoma metropolitan region being 10% higher than the national average was not only false according to government statistics he himself cites elsewhere,<sup>47</sup> but also it isn't even in the top ten nationwide.<sup>48</sup> He also admitted he did no research aside from a review of the documents handed to him by PSP.<sup>49</sup>

30        Though PSP also claims that it cannot attract trainees that are the "elite" or "best of the best," its own testimony demonstrates otherwise: only the most skilled applicants become PSP trainees, and every PSP trainee who is licensed has

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<sup>43</sup> Moore, Exh. MM-1T at 90:4-13 (Figure M); Moore, Exh. MM-26.

<sup>44</sup> Lough, TR. at 505:12 – 508:10.

<sup>45</sup> Lough, Exh. DL-29X at 5.

<sup>46</sup> Lough, TR. at 505:9-13.

<sup>47</sup> *Id.* at 505:9-20.

<sup>48</sup> Moore, Exh. MM-33 at 6 ("Top paying metropolitan areas for Captains . . .").

<sup>49</sup> Lough, TR. at 508:11 – 509:2.

acquired elite level skills when licensed.<sup>50</sup> Claimed recruiting difficulties are further belied by the fact that 37 out of 40 applications received by BPC were qualified to sit for the 2021 examination.<sup>51</sup> PSP has not demonstrated that there is any shortage of qualified applicants.

31 Nor has PSP succeeded in correlating safety with compensation. PSP's own evidence shows that the pilotage grounds with the highest levels of pay have some of the highest numbers of pilotage accidents in the world.<sup>52</sup> PSP's expert admitted that no correlation between pilot safety and compensation exists.<sup>53</sup>

32 Finally, PSP makes specious claims that, without higher compensation, it cannot recruit from a limited pool of diverse pilotage applicants. PSP did not provide any baseline demographic data for either in the Puget Sound or nationally. When asked to produce baseline data in discovery for the years 2018-2022, PSP could produce demographic data only for 2022, and the American Pilots Association could not produce any demographic data at all, claiming that the "APA does not track the membership data requested."<sup>54</sup> Without any applicable demographic data whatsoever, no evidentiary basis exists to support a claim that PSP cannot attract more diversified candidates than other pilotage grounds.

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<sup>50</sup> Klapperich, TR. at 146:11 – 147:7; Klapperich, Exh. ECK-1T at 22:5.

<sup>51</sup> Moore, Exh. MM-1T at 90:21.

<sup>52</sup> Stoller, Exh. MSS-20X at 8-11.

<sup>53</sup> Stoller, TR. at 311:3-7.

<sup>54</sup> Costanzo, Exh. CPC-32X at 1-4.



33 Diversifying the pilot workforce is a significant and pervasive challenge that must be addressed across the entire maritime sector nationwide.<sup>55</sup> But simply raising the net income of nondiverse membership does nothing to enhance diversity, equity, and inclusion.<sup>56</sup> If PSP were truly dedicated to DEI, it would pursue these goals as ends unto themselves, as higher compensation is not a prerequisite for doing what is right.<sup>57</sup> PSP should instead endorse the PMSA proposal for a BPC diversity program jointly funded by ratepayers and pilots.<sup>58</sup>

**4. The Commission should not prematurely authorize a tariff based on an unestablished, undefined, and legally uncertain retirement plan.**

34 PMSA shares Staff's dim view of the PSP arguments regarding its retirement plan. PMSA agrees that the PSP proposal suffers from significant uncertainty and obvious practical and legal deficiencies; and that PSP is mistaken in its argument that Washington state law compels the inclusion of all pension costs in rates.<sup>59</sup> The Commission should again direct PSP to complete all Order 09 instructions.<sup>60</sup>

35 Much of the uncertainty and questions arise from PSP's intention to use a multiple-employer defined benefit (MEP-DB) plan as a non-employer. The recent amendment to federal regulations that allows a non-employer like PSP to use a

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<sup>55</sup> Nalty, Exh. KN-1T at 18:6-24.

<sup>56</sup> Nalty, TR. at 760:3-23.

<sup>57</sup> PSP Initial Br. at ¶ 77 (stating that PSP will not encourage female mariners to apply to join PSP due to current compensation); Costanzo, Exh. CPC-33X at 32 (stating that PSP would do more recruitment of underrepresented mariners if individual pilot DNI were increased).

<sup>58</sup> Moore, Exh. MM-1T at 277:1-278:12.

<sup>59</sup> Staff Initial Br. at ¶¶ 32-36.

<sup>60</sup> PMSA Initial Br. at ¶¶ 79-83.

multiple employer plan<sup>61</sup> specifically states it “is limited to defined contribution plans.”<sup>62</sup> PSP nonetheless seeks to use this new amendment to sponsor a defined benefit plan. While PSP drafted a request for the U.S. Department of Labor to provide an advisory opinion on an MEP-DB plan, it omitted from the letter this foundational question about applying the regulatory amendment for a non-employer to sponsor an MEP defined benefit plan.<sup>63</sup>

36 A defined contribution plan is both less expensive and legally certain. MEP-DB plans are rarely used except by very large employers because they are costly to maintain and generally disfavored.<sup>64</sup> A less costly and less complicated path to exit PSP’s unsustainable defined benefit plan would be a transition to a funded defined contribution plan, similar to what the Columbia River pilots did in 1995.<sup>65</sup> PSP’s arguments against doing so<sup>66</sup> disregard the fact that all the actuarial savings PSP predicts for its proposal are based on funding returns, not on the form of the plan.<sup>67</sup>

37 Finally, given the savings that PSP’s own actuary has claimed it would achieve by transitioning away from its current unfunded defined benefit system to a funded system (savings of \$100 million to \$124 million)<sup>68</sup>—and because these savings would be achieved through a transition to a defined contribution plan just as easily

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<sup>61</sup> McNeil, Exh. BJM-1T at 5; Exh. BJM-9X; McNeil, TR. at 438:20 – 439:17.

<sup>62</sup> McNeil, Exh. BJM-9X at 5.

<sup>63</sup> McNeil, Exh. BJM-6.

<sup>64</sup> Noble, TR. at 811:6 – 812:4.

<sup>65</sup> Wood, Exh. CRW-6T at 3:13-18.

<sup>66</sup> Wood, Exh. CRW-1T at 4:19–5:4.

<sup>67</sup> Wood, TR. at 680:9-16; Noble, TR. at 808:15 – 810:24.

<sup>68</sup> Wood, Exh. CRW-6T at 5:19-25.

as a transition to a defined benefit plan<sup>69</sup>—rates must reflect these cost savings. And yet, PSP seeks the opposite: it proposes to increase the costs of its retirement system to ratepayers by imposing surcharges. This is entirely backwards. Considering these projected savings, if the Commission takes any action on pilot retirement other than what is recommended by Staff, the tariff should be reduced to include only the projected costs at the optimal level for ratepayers; PSP alone benefits from expenses maintained at the level imposed by its inefficient and suboptimal pay-as-you-go pension plan. PSP’s desire to increase rates and avoid cost savings only highlights the need to incentivize PSP to implement savings and efficiency measures.<sup>70</sup>

**5. PSP’s remaining automatic adjusters as proposed are inconsistent with Commission policy and should be denied.**

38 PMSA agrees with Staff’s positions opposing the PSP-proposed automatic adjusters generally. As discussed in Section II above, PMSA also agrees with the revised Staff position on COLA adjusters if they are properly limited.

39 In addition, PMSA recommends a mechanism for “pilot boat life extension projects.”<sup>71</sup> While PSP withdrew its request for this as not “a matter of imminent concern at present,”<sup>72</sup> the Commission should nonetheless authorize a pilot boat adjuster with compliance filings as recommended by PMSA. The issue is properly before the Commission. As PMSA is seeking a multi-year tariff, creating the

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<sup>69</sup> Noble, TR. at 808:15 – 810:24.

<sup>70</sup> See Moore, Exh. MM-1T at 279:26–281:10.

<sup>71</sup> Moore, Exh. MM-1T at 271:11–276:22.

<sup>72</sup> Carlson, Exh. IC-8T at 18:23–19:1.

compliance filing option would simply allow PSP to exercise this option when a pilot boat life extension project is imminent without the need for unnecessary future filings and costs on a matter that has already been the subject of testimony and briefing in this case.

**D. The Commission should find that the PSP filing is not well-grounded in fact and not warranted by existing law.**

40 Despite the volume of PSP's testimony claiming otherwise, the relevant facts remain nearly identical in this case to those in the prior rate case decided in 2020. The training program of the BPC still maintains a waiting list, just as it did in 2020. The number of assignments completed in 2022 was nearly exactly as predicted by the Commission Staff in 2020. Pilots on the Puget Sound have continued to maintain an impeccable safety record with no oil spills from piloted vessel incidents since 1999,<sup>73</sup> just as in 2020. And, the legal structure for pilot liability, for vessel liability, and for oil spill liability is largely identical, and just as robust, stable, and enforceable now as it was in 2020. No PSP testimony alleging anything to the contrary has established otherwise.

41 Furthermore, PSP should not benefit from tactics including significant departures from effective responses to discovery, wholesale blanket refusals to respond to propounded data requests.<sup>74</sup> These come on the heels of a pattern of

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<sup>73</sup> Carlson, Exh. IC-17X at 5 (“PSP admits that since at least 1999, no significant oil spills have occurred in the Puget Sound . . . while under pilotage by a PSP pilot.”).

<sup>74</sup> Noble, Exh. CN-4.

disregard for Commission rules and deliberate lack of compliance with Commission instructions from prior rate case Orders.

42 Based on all the testimony, evidence, and briefing in this case, PMSA respectfully requests entry of the following findings and conclusions in the Commission’s final order: PSP’s case is not well grounded in fact; PSP’s rate request was not warranted by existing law; PSP’s filing was not based on a good–faith argument for the extension, modification, or reversal of existing law or the establishment of new law; and PSP’s denials of factual contentions or other non-responsive discovery in this proceeding were unreasonable and unwarranted.

**IV. THE COMMISSION SHOULD APPROVE TOTE’S REQUEST AND DENY PSP AN UNINTENDED REVENUE WINDFALL**

43 The Commission should approve TOTE’s request for a refund of all overcharges dating back to January 2021 and an amendment to the tariff that maintains the traditional domestic gross registered tonnage for domestic vessels. The tariff as it existed before the prior rate case was presumptively lawful, fair, just, and reasonable,<sup>75</sup> and, as concluded in Order 12, no change in that original tariff had been justified by PSP in that case. PSP should not receive a windfall exceeding the total revenue requirement established in Order 09 on a theory of “absolute risk.”

**V. CONCLUSION**

44 The Commission should adopt Staff’s recommendations with the adjustments and clarifications requested by PMSA. This will result in a tariff that is fair, just,

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<sup>75</sup> RCW 88.116.050.

reasonable and sufficient. By contrast, PSP's proposal is based on incomplete, contradictory, and irrelevant evidence and is legally unsound. PSP's proposal should also be denied due to PSP's failure to follow Commission rules and instructions. The Commission should specifically find that PSP's case was not well-grounded in fact and did not follow applicable law. Finally, the Commission should grant TOTE's requests for a full refund of the amounts it was over-charged and an amendment to the tariff to continue the prior treatment of domestic tonnage for domestic vessels.

DATED this 12th of May, 2023.

Respectfully submitted,

*s/ Michelle DeLappe*

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