

**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 COMMISSION STAFF

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I. INTRODUCTION

1 In this case of first impression for the Washington Utilities and Transportation Commission (Commission), Commission Staff (Staff) has endeavored to apply its experience in ratemaking to the provision of maritime pilotage service. Although the Commission and Staff continue to learn about the pilotage industry, Staff suggests that the issues presented in this case are not so complex or unique to pilotage that the Commission cannot confidently apply its ratemaking experience and expertise to the facts presented by the parties. With this foundation in mind, Staff makes three primary recommendations, in addition to several policy arguments and expense adjustments for the Commission's consideration.

2 First, the Commission should reject the Puget Sound Pilot Association's (PSP) recommended Target Assignment Level (TAL) and resulting recommendation of funding 62 pilots in rates. Not only has the Board of Pilotage Commissioners (Board) authorized fewer than 62 pilot licenses for the Puget Sound pilotage district, the Board has also recently rejected a PSP proposal to set the TAL at 118. The Commission should find that funding more pilots than are authorized by the Board would usurp the authority of the Board to regulate pilotage service and determine the number of pilots necessary for the Puget Sound pilotage district.

3 Second, the Commission should exclude funding for the historic callback liability from the revenue requirement. As demonstrated by Staff, PSP has already received funding and the callback liability is a result of PSP over-distributing revenue in prior periods when callback assignments were performed, due to PSP's reliance on modified-cash basis accounting. Additionally, the Commission should determine that the pilots are not entitled to overtime because they are owner/members of PSP, not employees, and PSP's bylaws do not

create a reasonable expectation of a specific amount of distributable income or compensation. Further, the Commission should determine that PSP is not in a transition state for the purpose of the regulatory treatment of the callback liability. Finally, the Commission should not include additional funding for the historic callback liability because simply increasing pilot compensation will not resolve PSP's reliance on callbacks, as callbacks are the product of PSP's staffing decisions.

4 Third, the Commission should decline to adopt PSP's proposed distributable net income (DNI) of \$500,000. PSP has not established or explained a method by which to compare other pilotage districts to the Puget Sound pilotage district. Further, PSP has not provided any reasoning of how it determined a DNI of \$500,000 is appropriate for the Puget Sound pilotage district based on a comparison to the compensation in other pilotage districts. Therefore, the Commission should reject PSP's proposed DNI as arbitrary.

5 In addition to the three points above, Staff recommends that the Commission reject Pacific Merchant Shipping Association's (PMSA) recommendation for a performance audit of PSP, as a performance audit may be tantamount to pre-approval of PSP's operations. Further, the Commission should adopt Staff's recommendations as described in its testimony and briefing. Finally, the Commission should wholly disregard PSP's frequent and repeated mischaracterizations of Staff's testimony and positions.

II. THE COMMISSION SHOULD REJECT PSP'S PROPOSED NUMBER OF PILOTS AND TAL

6 The Commission should reject Puget Sound Pilot's (PSP) request to fund 62 pilots based on its Target Assignment Level (TAL) of 118. PSP argues that the Commission should determine a pilot's TAL based on "the average number of assignments a pilot would perform on watch if PSP were staffed in a manner that permitted pilots to work only while-

on watch.”¹ Based on this standard, PSP has calculated a TAL of 118, which would require 62 pilots.² However, given that the Board has limited the authorized number of pilot licenses to 56, PSP’s proposed staffing level of 62 pilots is impossible to achieve. The Commission should determine that funding more pilots than the maximum number the Board authorized would be unreasonable because it presents an unachievable staffing level and the Board has recently declined to adopt the very same PSP-proposed TAL of 118.³ Additionally, funding pilots above the maximum Board-authorized pilots would infringe on the Board’s authority to determine the number of pilots necessary to be licensed in each pilotage district.⁴

7 In addition, the Commission should reject PSP’s invitation to “establish a ratesetting methodology with an outcome that cannot be directly altered by decisions that rest solely within the ambit of the BPC’s authority.”⁵ While it is true that the Commission and the Board have distinct responsibilities with respect to maritime pilotage, this division of authority does not imply that the two agencies should regulate in such a manner that each agency effectively isolates its regulation from the other. The Commission is charged with determining fair, just, reasonable, and sufficient rates for the public service that is otherwise regulated by the Board, and such rates should reflect the Board’s policy determinations. Finally, Staff suggests that by expressly authorizing the Commission to “[r]equest assistance from the [B]oard,” the legislature has indicated its intent for the Commission and Board to cooperatively regulate maritime pilotage with each performing its respective duties.⁶

¹ Initial Brief of PSP, 24, ¶ 61 (PSP Brief).

² PSP Brief at 24-25, ¶ 62.

³ Carlson, Exh. IC-32X at 8.

⁴ RCW 88.16.035(1)(d).

⁵ PSP Brief at 22-23, ¶ 58.

⁶ RCW 81.116.020(5)(a).

8 Consequently, the Commission should reject PSP’s proposed TAL and number of pilots to fund.

III. THE COMMISSION SHOULD EXCLUDE HISTORICAL CALLBACK LIABILITY FROM RATES AND REJECT PSP’S PROPOSED DNI

A Callbacks

1. Callbacks were funded at the time the callback assignments were performed; however, PSP did not defer that funding to cover the period when the callback is claimed

9 Staff maintains its argument that PSP has already received revenue that it should have used to offset its callback liability when the callback assignment was paid for by the ship receiving service. However, by distributing all of the pilotage revenue pursuant to its bylaws, including revenues associated with callback assignments, PSP has not maintained any reserve to offset the lack of revenue generation caused by pilots burning callback days associated with those assignments.⁷ While PSP argues that less distributable income caused by pilots burning callback days is unfair to pilots who are currently accepting pilotage assignments,⁸ Staff suggests a present reduction in distribution is a reasonable result of a past over-distribution of revenue.⁹ Had PSP properly recognized and deferred the revenue associated with a callback assignment in the manner described by Staff, PSP would have no need for additional income.

10 At the hearing, PSP argued that it would be unfair to defer revenue associated with a callback assignment to a future period because doing so would penalize the pilot who

⁷ Kermode, Exh. DKP-1Tr at 17:16 – 18:2 (“The recognition of the reduction of revenue is important. The impact of using accrual accounting, instead of the modified cash basis currently being used by PSP, is that the modified cash basis overstates revenue, for the period, resulting in overstated earnings. All of the overstated earnings are then distributed to the pilots as distributed net income instead of recognizing those earnings [as] the funding for the later period. Prematurely releasing revenue required to fund compensatory days in subsequent periods means that the necessary revenue will no longer be available to match the cost of a pilot when the pilot decides to use a compensatory day.”).

⁸ Carlson, Exh. IC-4Tr at 3:22-23.

⁹ Kermode, Exh. DKP-1Tr at 17:16 – 18:2.

performed the assignment.¹⁰ While it is true that deferring revenue associated with a callback assignment proportionally reduces each pilot's distribution for that period,¹¹ one must recall that if the income had been deferred, it would have been distributed to the pilots eventually when a pilot used a callback day. Stated another way, while there would be a temporary reduction in distributable income in the short term, deferring callback assignment revenue does not affect PSP in the long term because the money is ultimately returned to PSP and the pilots.¹² Not only would deferring callback revenue preserve funds for a future period, thereby lessening the impact of pilots not taking revenue generating assignments, it would also provide more consistent funding treatment of all callback days, not just callback days burned prior to retirement.¹³ As such, Staff maintains that deferring revenue associated

¹⁰ Kermode, TR. Vol. IV 570:25 – 571:13 (Q: But if we can both agree there's no additional revenue, in that instance, wouldn't deferring the revenue by [Staff]'s income accrual suggestion actually decrease the present income of pilots almost – almost punitively for accepting that additional work? In other words, I'm trying to understand the affect of the accrual accounting in realtime here in terms of the revenue generation. A: It would penalize who? Q: Wouldn't it penalize the pilot who – who performed the work and then consequently the association, if you deferred that? I mean, it moved a ship, but wasn't going to get paid if you accrued it and deferred it?").

¹¹ Kermode, TR. Vol. IV 571:14-23.

¹² Additionally, Staff observes that PSP's arguments that it would be unfair to defer revenue, but also unfair to not include additional revenue for callback assignments, based on a single instance of pilotage service, appear to highlight Staff's concerns regarding double recovery.

¹³ PSP states that it is only seeking to include additional funding for callbacks burned prior to retirement, rather than additional funding for all callbacks. Carlson, Exh. IC-4Tr at 6:1-4. In principle, each callback assignment creates the same future reduction in pilot availability in the form of a callback day. However, PSP's bylaws distribute a pilot's income share based on the number of duty days, not assignments, that a pilot works, such that so long as a pilot has worked all required duty days, the pilot is entitled to an equal distribution share, regardless of the number of assignments an individual pilot has performed. Carlson, Exh. IC-4Tr at 2:19 – 3:2. See also, Initial Brief of Commission Staff, 7-9, ¶ 13-15 (Staff Brief). By only seeking to recover liability associated with callbacks burned prior to retirement, PSP appears to distinguish between callbacks taken while a pilot is still accepting assignments and callbacks taken when a pilot intends to refuse future assignments. As explained above, under its bylaws, PSP's distinction is one of degree, not difference, because whether a pilot is taking callbacks with the intent to accept future assignments or not, a pilot's distribution is determined based whether the pilot has completed all assigned duty days. Had PSP deferred revenue associated with callback assignments as described by Staff, PSP would always have some revenue available to distribute each time a pilot claims a callback day, which would have added regularity and consistency to funding callback days funding process.

with callback assignments until the callback day associated with the assignment is claimed is neither unfair nor unreasonable.¹⁴

2. PSP has not demonstrated a legitimate, reasonable expectation of additional income related to callback days

a. PSP bylaws and organizational structure do not create a reasonable expectation of a specific amount of funding or overtime

11 Staff argues that PSP has not established that either the association or its members have a reasonable expectation of additional revenue greater than tariffed rates for callback assignments and PSP's citation to Board precedent regarding callbacks funded through an agreed memorandum of understanding (MOU) is unhelpful to the Commission's analysis.

12 Neither PSP's bylaws, nor its status as an association, creates a reasonable expectation of additional funding for callbacks. As explained in Staff's initial brief, the callback system at issue in this case is a creature of PSP's bylaws and consequently, callback days only have monetary value in the context of PSP's income distribution formula.¹⁵ Stated another way, while it is possible to assign a value to a callback day by calculating the relative proportional value of a duty day under the income distribution formula for a particular period, the callback day's value is necessarily relative to the total amount of revenue available for distribution to the pilots for the period the callback day is

¹⁴ In its initial briefing, PSP asserts that Staff has argued that it opposes funding callbacks because "they could have been [funded] had PSP only distributed additional revenue to the pilot who worked a callback assignment." PSP Brief at 29, ¶ 74. PSP does not cite to any portion of the record for this claim. By way of clarification, Staff has argued that no additional revenue is appropriate. Staff does not recommend that PSP individually compensate a pilot for a callback, which would conflict with PSP's present equal distribution formula. PSP also states that if it received additional revenue for callback liability, PSP could "consider Staff's recommendation [to] distribute the income immediately without a Callback liability." PSP Brief at 29, ¶ 73. PSP cites to no portion of the record for its mischaracterization of Staff's recommendation. Staff would again like to clarify that it has not recommended that PSP simply distribute all revenue without recording a liability, and Staff has critiqued that practice in this case as having caused PSP's current lack of funding to offset its historic callback liability. *See* Kermode, Exh. DPK-1Tr at 14:1 – 18:2.

¹⁵ Staff Brief at 11, ¶ 20.

used. As such, under PSP's bylaws, pilots burning callback days do not have a reasonable expectation that each callback day will entitle them to a specific amount of compensation, they can only expect to receive a share of whatever compensation is available for that period.

13 While this compensation arrangement presents some risk to PSP that individual compensation will fluctuate based on conditions in a particular period, resulting in higher or lower than expected distributable net income, Staff asserts that such risk is a component of how the pilots that make up PSP have chosen to organize themselves as an association. In its briefing, PSP cites with approval to Staff's description of DNI:

DNI is the projected amount of net income each pilot would earn if the total number of implied pilots was active and providing pilotage services. The Commission *should not consider DNI as a salary or wage* because each pilot is an independent business entity and not an employee of PSP. Additionally, *DNI is not a guaranteed payment*. As with all Commission-regulated, investor-owned companies, *the pilots bear the risk of the enterprise, reaping the benefit when there are excess earnings and bearing the cost when there are insufficient earnings*.¹⁶

¹⁶ PSP Brief at 11, ¶ 29 (emphasis added) (quoting Kermode, Exh. DPK-1Tr at 11:12-19). However, Staff notes that in the same paragraph, PSP states that it agrees with Staff that DNI represents a "return on pilots' labor," citing Mr. Kermode's initial testimony and cross-answer testimony. Staff disagrees with PSP's comment that Staff believes that DNI represents a fair return on pilotage labor, noting that Mr. Kermode's initial testimony, which is block quoted by PSP, did not mention the concept of a fair return on pilot labor at any point in the testimony. Additionally, Mr. Kermode testified in his response testimony that he was "critique[ing] the derivation of [PMSA's] recommended compensation for individual pilots, which [PMSA] refers to as a 'fair return on labor.'" Kermode, Exh. DPK-3T at 3:6-8. Ultimately, Staff testified that it disagreed with PMSA's derivation of a fair return on pilotage labor, explaining:

[PMSA]'s analysis conflates the concept of hired laborers with services provided by skilled professionals that act as independent contractors that have come together to work as an association[.] . . . PSP is a professional organization which acts as a conduit for the net earnings of the pilots. This is an essential difference that distinguishes the PSP business model from other industries regulated by the Commission. The distributions received by the pilots *are not payments for employee labor, but instead, earnings from self-employment*.

Kermode, Exh. DPK-3T at 16:13 – 17:3 (emphasis added). Staff maintains that a "return on pilotage labor" is an improper concept given PSP's organization as an association and objects to PSP's attempt to mischaracterize Staff's testimony.

As explained by Staff, and quoted by PSP, a pilot's DNI does not guarantee a specific amount of compensation, unlike an employee receiving a wage or salary.¹⁷ By extension, Staff argues that because the pilots are not employees of PSP, they are not entitled to overtime for their work.¹⁸ If PSP had desired to create a reasonable expectation of a specific compensation amount, PSP could have established its organization such that the pilots were employees, similar to the Grays Harbor pilots.¹⁹

14 In its briefing, PSP argues that it needed to rely on its present callback system because it “could not historically distribute additional income for Callback assignments in a just and equitable way,” and therefore it could only offer days off in the future to incentivize pilots to accept callback assignments, citing its bylaws.²⁰ However, PSP has the power to amend its bylaws and the record in this case shows that there are alternative approaches to implementing a callback system.²¹ PSP has offered no evidence that it has attempted to study or explore other means of organizing or funding its callback system, other than requiring additional revenue. Nor does PSP provide any discussion as to why its approach to managing callbacks is the most effective and reasonable approach relative to other possible systems and solutions.²² As such, the Commission should reject PSP's conclusory assertion

¹⁷ See also, Carlson, Exh. IC-4Tr at 52:4-5 (“Additionally, by providing pilotage service through an association, each pilot accepts some level of risk of not being compensated or suffering reduced compensation when shipping traffic reduces like we are currently experiencing.”).

¹⁸ Staff Brief at 11, ¶ 20. Although Staff acknowledges that the term “overtime” has been used over the course of this proceeding, Staff has used the term as a conceptual short hand, and does not agree that the pilots are entitled to overtime, as will be further explained below.

¹⁹ Bench Request No. 5 at 36 (BR-5) (showing that Grays Harbor pilots receive a wage and noting that “[l]icensed pilots are employees of the Port of Grays Harbor as opposed to being independent contractors.”). See also, Royer, Exh. JR-31r at 11 (showing Grays Harbor pilots receiving a salary in the 2005 Board Annual Report and defining “salary” as “a fixed annual amount paid to the pilots in monthly or weekly installments, irrespective of the number of vessel arrivals.”) (emphasis added).

²⁰ PSP Brief at 30, ¶ 74 (citing von Brandenfels, Exh. EVB-5X).

²¹ Carlson, Exh. IC-34X at 17-18 (explaining that Columbia River Bar Pilots receive \$2,000 for a callback day).

²² Quick, Exh. GQ-1T at 27:10-22 (noting that other pilot districts staff for peak demand).

that it requires additional revenue to fund callbacks because it had no alternative but to continue to use the staffing and callback system that it has traditionally relied on.

15 Given that the PSP's organizational structure contemplates that PSP will reap the benefits when times are good and bear the burdens when times are bad, and the pilots are not employees of PSP, but rather owner/members who have created this structure, Staff urges the Commission to determine that PSP has no reasonable expectation of receiving additional revenue to offset a decrease in individual distributable net income caused by pilots burning callback days.²³

b. Board precedent under MOU

16 In its briefing, PSP cites to several Board records to support its argument that the Board has funded historic callback liability in prior years, referring to the period when the Board was presented with joint recommendations for tariff increases.²⁴ From 1996-2000, the Board set the Puget Sound pilotage district tariff based on an MOU among PSP, the Puget Sound Steamship Operators Association (PSSOA), and ARCO Marine, which included a formula to adjust tariff rates.²⁵ For example, at the May 2000 regular meeting of the Board, the Board adopted the proposed joint tariff recommendation as follows:

- A 2.85% decrease in all tariff categories, except transportation, effective July 1, 2000 through June 30, 2001[.]
- Total projected vessel assignments for 2000 = 8,238 (Maximum Safe Assignment Level = 149)
- Number of tariff-funded pilots, including one non-watch-standing president and compensation for accrued Comp Days = 55
- Target Net Income per pilot = \$182,909
- Individual Business Expense allowance per pilot = \$16,769.²⁶

²³ Kermode, DKP-1Tr at 14:1 – 18:2 (explaining that PSP failed to recognize and defer revenue related to callback assignments based on the use of modified cash basis accounting).

²⁴ PSP Brief at 30, ¶ 75.

²⁵ Tabler, Exh. WT-1T at 8:17-24.

²⁶ Kermode, Exh. DPK-15X at 1.

17 Following the 1996-2000 MOU, PSP, PSSOA and Polar Tankers (successor to ARCO Marine) entered into a new five-year MOU that included a similar formula to adjust the Puget Sound pilotage district tariff.²⁷ At its May 2001 regular meeting, the Board considered a motion to increase all tariff categories by 1.32 percent, except transportation, based on the following factors:

- Tariff funding of an increase of 20% in retirement benefits for former PSP members and/or their surviving spouses who are currently receiving benefits
- An adjustment in the benefit rate from 1.25% to 1.5% for each year of service in the Amended Retirement Program of [PSP]
- Total project vessel assignments for 2001 = 8,262 (Maximum Safe Assignment Level =149)
- Number of tariff-funded pilots, including one non-watch-standing president and compensation for accrued Comp Days = 56.78
- Target Net Income per pilot = \$192,237
- Individual Business Express allowance per pilot = \$22,297

However, an additional amendment to the motion was proposed “to specify that the bulleted items listed above are factors upon which the proposed new tariff is based and that the Board intends to adopt *only the 1.32 [percent] tariff increase, not the individual factors.*”²⁸ The Board unanimously passed the amended motion.²⁹

18 Based on the above, it does not appear that the Board has consistently relied on the factors used in the 1996-2000 MOU and the 2001-2005 MOU. Although the May 2000 minutes reference factors from the 1996-2000 MOU, the minutes are ambiguous as to whether the Board agreed with the analysis supporting the factors or only the result produced by those factors.³⁰ By contrast, the May 2001 minutes clearly demonstrate that the Board did not rely on the individual factors presented in the 2001 MOU, despite some

²⁷ Tabler, Exh. WT-1T at 9:1-3, Kermode, DPK-13X at 1.

²⁸ Kermode, Exh. DPK-13X at 1 (emphasis added).

²⁹ Kermode, Exh. DPK-13X at 1.

³⁰ Kermode, Exh. DPK-15X at 1.

overlap with the factors referenced in the 2000 rate-setting process.³¹ While the Board did expressly countenance the MOU formula in its 2005 rate-setting,³² Staff notes that the Board did not continue to rely on the MOU formula after the MOU expired.³³ Furthermore, even assuming the Board did rely on the MOU formulas, the Board did not provide any analysis or explanation as to why it believed that additional compensation for accrued callback days was reasonable or appropriate. As such, the Board's prior approval of the MOU tariff changes do not provide a stand-alone basis for the Commission to include historic callback liability in rates because the Board's reliance on the MOU factors has changed over time and the Board did not provide reasoning or analysis that the Commission could adopt in this proceeding.³⁴

3. Callback accumulation will not be mitigated without additional authorized pilots or changes to PSP's bylaws

19 The Commission should exclude historical callback recovery from rates because increasing pilot compensation does not actually reduce PSP's reliance on callbacks. Rather, it would serve to create an incentive for yet additional reliance on callbacks. According to PSP, the accumulation of callbacks is a result of insufficient pilots to meet the demand for service.³⁵ As explained by Captain Quick:

Q: Are there any other perspectives in your view on the implications of staffing levels at present?

³¹ Kermode, Exh. DPK-13X at 1.

³² Kermode, Exh. DPK-14X ("Speaking to the motion [to adjust the tariff rates], Commissioner C. Davis stated that the Board recognizes the formula set forth in the 5-year tariff agreement and as a result of the Board's acceptance of the tariff proposal, it should be made clear that the Board is not rubber-stamping the agreement.").

³³ Royer, Exh. JR-31r at 30. *See also*, Carlson, Exh. IC-35X at 4 ("Following the termination of the MOU, the BPC stopped acknowledging any factors it considered in setting tariffs.").

³⁴ *Squaxin Island Tribe v. Wash. Dep't. of Ecology*, 177 Wn. App. 734, 742 (2013) ("Arbitrary and capricious agency action is willful and *unreasoning* action taken without regard to the attending facts or circumstances. . . . [A court will] review the record to determine whether the agency reached its decision through a process of reason, not whether the result itself was reasonable in the judgment of the court.") (internal citation and quotation omitted) (emphasis omitted and added).

³⁵ Carlson, Exh. IC-1T at 8:16-20.

A: Yes. While pilots nationally typically staff to peak demand to avoid shipping delays, *here the pilots have settled on staffing to average vessel traffic movements*. Nationally, pilot groups staff to peak demand to avoid ship delay because if staffing is based on average traffic movement, there would be considerably more vessel delays which actually cost the shipping industry more than additional pilots presently in rates.

Q: What has been the circumstance in the Puget Sound based on your review of staffing and trends therein?

A: *Rather than staffing to the peaks or simply delaying vessels apparently as part of an agreement with the industry historically, PSP has staffed to average demand* but then relied on the comp day system described above that requires calling in off-duty pilots to provide the necessary additional capacity during peak periods.³⁶

Staff agrees that callbacks are a product of an average-demand staffing system.³⁷

20

However, PSP has argued that “Callbacks represent additional work performed by pilots as a result of staffing controlled by the BPC at levels below peak demand,” and asks the Commission to set pilot compensation at a “peak (or near-peak) demand level.”³⁸ While the Board controls the number of pilot licenses, PSP controls how it staffs its different watch rotations. At hearing, Captain Carlson testified that he “designed the schedule that [PSP has] now with 11 watches.”³⁹ While it may be that there is an insufficient number of pilots to staff at a peak demand level under PSP’s current watch schedule, PSP has not shown that it is unable to modify its watch schedules to staff at peak demand within the individual watch rotations. Stated another way, PSP has not shown that it cannot effectively staff for peak demand by modifying its watch rotation schedules to distribute the current group of pilots over fewer watches, thereby increasing the number of pilots available per watch. As such,

³⁶ Quick, Exh. GQ-1T at 27:10-22 (emphasis added). Staff notes that Captain Carlson has argued that “Mr. Kermode says it was the pilots’ choice to staff average, but that is actually incorrect because PSP does not have control over the number of licenses issued.” Carlson, Exh. IC-4Tr at 2:1-3. However, Staff relied on Captain Quick’s description of PSP’s staffing quoted above. *See* Kermode, Exh. DPK-1Tr at 12:11-12 (“According to Capt. Quick, PSP has elected to staff its watches at the average demand level.”). Moreover, even though the Board controls the number of authorized pilot licenses, PSP controls how it chooses to staff its watch rotations and could change staffing levels internally through the use of a different watch rotation cycle.

³⁷ Kermode, Exh. DKP-1Tr at 13:7-8.

³⁸ PSP Brief at 3, ¶ 5.

³⁹ Carlson, TR. Vol. IV 393:9-10.

PSP's request to fund peak or near-peak demand level pilot staffing is unreasonable because it does not correspond to PSP's average-demand pilot staffing level in practice.⁴⁰

21 Insofar as callbacks are the product of a staffing paradigm, simply increasing pilot compensation will not reduce PSP's reliance on callbacks. PSP's NASA fatigue study states "[a]dditional staff are required in order to deplete the cumulative bank of accrued compensation days and to reduce or eliminate the rate of compensation day accruals."⁴¹ The report further states that "[additional staff] is particularly important given that many pilots are nearing retirement and will use compensation time and *will not be available for work*."⁴² The study concludes that "[g]oing forward, [PSP] should increase staffing levels to eliminate the need for frequent callbacks."⁴³ However, the Commission has no authority to approve or license additional pilots, that power is reserved to the Board.⁴⁴

22 Furthermore, PSP does not currently exert any control over the accumulation or use of callback days. At hearing, PSP stated that it could not require a pilot not to use a callback day, even if the use of a callback day would require another pilot to perform a callback assignment.⁴⁵ Additionally, in 2018, PSP removed the previous limit on the number of callback days that a pilot could accrue, resulting in a "ballooning of the accumulated callback days."⁴⁶

⁴⁰ As explained above, pilots are not entitled to any overtime, not only because they are owners, but also because PSP's organizational structure and bylaws do not guarantee a specific level of compensation.

⁴¹ Carlson, Exh. IC-15 at 44.

⁴² Carlson, Exh. IC-15 at 44 (emphasis added).

⁴³ Carlson, Exh. IC-15 at 44.

⁴⁴ Moreover, under the current number of pilotage licenses authorized by the Board, it is impossible for the PSP to have 62 pilots, consequently PSP cannot achieve the reduction described in its callback reduction analysis because the Board has authorized only 56 licenses at this time. Khawaja, Exh. SK-1T at 9, Table 5 (showing a need for 62 pilots to reduce reliance on callbacks).

⁴⁵ Carlson, TR. Vol. III 343:4-22. *See also*, Carlson, TR. Vol. III 345:18 – 346:8 (describing PSP's callback system in part as "self-perpetuating").

⁴⁶ Carlson, TR. Vol. IV 370:17-23.

23

Based on the argument above, the Commission should reject PSP’s request to fund the historic callback liability. Callbacks are a result of PSP’s decision to use average demand staffing and the historical callback liability is a consequence of PSP’s over-distribution of revenue in prior periods due to its failure to defer distribution to periods when callback days are burned. Without additional authorized pilots and changes to PSP’s bylaws, it is unreasonable to expect that PSP’s proposed additional revenue for accumulated callback liability will prevent callback accumulation from occurring again in the future. Significantly, PSP has not provided any support for its claim that not funding historic callback liability may impact its creditworthiness.⁴⁷ As such, including additional revenue would serve only to perpetuate the current cycle of callback accumulation at high rates for ratepayers and would require future revenue increases when successive generations of pilots retire and burn callback days. The Commission should not allow this pattern to continue.⁴⁸

4. Staff’s proposed revenue requirement funds all prospective pilotage assignments, including assignments performed as callback assignments

24

In its briefing, PSP suggests that Staff’s model includes funding “that will help fund the liability created by Callbacks.”⁴⁹ To clarify, Staff has not proposed to include a premium to fund the historical callback liability. Staff has used an implied 52-pilot count in order to ensure that there is sufficient funding for each pilot assignment in the rate effective period, whether that assignment is performed as an on-watch assignment or as a callback assignment. As explained by Mr. Sevall at hearing:

Q: Okay. And so when you use the five-year historic average, you – I understand you used the years 2014 to 2018. Did you do anything to determine what impact the analysis would be in terms of if some portion of a pilot’s work would be done on duty versus off duty?

⁴⁷ PSP Brief at 48, ¶ 122.

⁴⁸ Kermode, TR. Vol. IV 576:12 – 578:12.

⁴⁹ PSP Brief at 32, ¶ 79.

A: No. This treats all assignments as equal. Acknowledging the fact – the facts that Mr. Kermode already laid out in his testimony, where the pilots received funds from shippers when they performed a job. Whether it was an on duty job or whether it was a callback job, that job generated tariff revenue which came – or was paid to PSP. Right.

So my job was to say how much revenue or DNI should go to each and every assignment. And I used the historical numbers to – and then adjusted inflation to do that.

And callback jobs are included in my TAL because the revenue that was generated from doing those callback revenues [sic] is also in the DNI, as explained by Mr. Kermode.⁵⁰

Stated another way, while funding more pilots than are presently licensed results in increased compensation to the pilots or a “premium,” the purpose of the premium is to ensure that all prospective assignments are appropriately valued based on Staff’s proposed TAL, not to provide additional compensation related to PSP’s historic callback liability.

5. PSP is not in a “transitional” state for the purpose of the Commission’s treatment of callbacks

25 PSP has also argued that the Commission should “find that accumulated Callback Days do not represent a double payment, and instead are a transition issue that result[s] from a strikingly different ratemaking process.”⁵¹ PSP analogizes its proposal regarding callbacks to prior utility transitions from a pay-as-you-go employee benefit approach to a full accrual accounting basis.⁵² PSP’s analogy is misguided and unpersuasive for three reasons.

26 First, in *Town of Norwood, Mass v. F.E.R.C.*, the Financial Accounting Standards Board had directed all companies subject to its standards to implement full accrual accounting with respect to post-retirement employee benefits.⁵³ In compliance with that direction, New England Power (NEP) “filed a rate request incorporating a switch to accrual accounting. As part of this switch, NEP petitioned to collect the transition costs – that

⁵⁰ Sevall, TR. Vol. IV 616:11 – 617:6.

⁵¹ PSP Brief at 3, ¶ 5.

⁵² PSP Brief at 31, ¶ 77.

⁵³ 53 F.3d 377, 378-79 (D.C. Cir. 1995).

amount of liability already accrued – from ratepayers over the next 20 years.”⁵⁴ In this case, PSP has not proposed to alter its accounting practices, nor has it been ordered to do so. Although PSP references a transition to Commission ratemaking, it does not cite any authority to support its implied premise that a shift in the rate-setting function from the Board to the Commission is the equivalent of a change in company accounting practice.⁵⁵

27 Second, as argued by Staff, PSP has already received funding for callback assignments under prior Board tariffs. Thus, the request to fund historic callback liability in this proceeding is not an attempt to recover deferred costs, but rather an attempt to receive additional funding due to over-distribution of revenue to pilots in prior periods.

28 Third, in *Town of Norwood*, NEP was obligated to its employees to provide post-retirement benefits. As stated by the court, “[u]nder NEP’s rate proposal, it will recover the cost of the transition obligation – the accumulated but unrecognized *obligation to current employees* – in rates over the next 20 years.”⁵⁶ As stated above, the pilots are not employees of PSP, and as a result do not have the same expectation as the employees in *Town of Norwood* with regard to overtime and additional compensation. Stated another way, although pilots burning callbacks reduces the amount of revenue that is available for equal distribution to all pilots in a given period, PSP is not obligated to its pilot members under the bylaws to make up the difference. Under PSP’s bylaws, the pilots are entitled to an equal share of revenue, not a fixed amount of compensation tied to either the number of completed assignments or another metric.

⁵⁴ *Town of Norwood, Mass. v. F.E.R.C.*, 53 F.3d 377, 379 (D.C. Cir. 1995) (emphasis omitted).

⁵⁵ Similarly, Staff’s recommendation regarding GAAP is limited to future filings with the Commission. Staff does not recommend that the Commission order PSP to adopt GAAP accrual accounting in practice.

⁵⁶ *Norwood*, 53 F.3d at 380 (emphasis added).

29 As such, PSP’s analogy of its historic callback liability to the transition obligation in *Town of Norwood* is inapposite, and Staff maintains that recovery of historic callback liability would be unreasonable double recovery and retroactive ratemaking.

6. The Commission should disregard PSP’s argument regarding Staff testimony that has been revised

30 In its briefing, PSP argues that Staff has misunderstood its callback system by attempting to develop a callback adjustment, citing to a Staff exhibit that Staff subsequently revised.⁵⁷ PSP acknowledges that Staff reversed the callback adjustment, but nonetheless proceeds to identify errors with the reversed callback adjustment.⁵⁸ The Commission should disregard PSP’s arguments regarding the reversed callback adjustment because the adjustment does not reflect Staff’s present recommendations and is no longer relevant. As PSP is well aware, that adjustment was affirmatively corrected by Staff early in the proceeding.

7. Staff has not proposed alternative resolutions to the callback liability issue and does not recommend a workshop to discuss callbacks

31 PSP suggests that Staff “hinted at some alternatives to the dilemma [of callback liability]: for instance, the possibility of cordoning off the previous accumulative liability and implementing the prospective liability on an accrual accounting basis while addressing [Staff’s] additional concerns about valuing callback days on a formula tied to the most recent DNI calculations.”⁵⁹ The cited portion of the transcript makes clear that Staff’s response involved a hypothetical scenario to illustrate Staff’s concern regarding PSP’s valuation of callback liability in the present period, rather than the period in which the

⁵⁷ PSP Brief at 34, ¶ 84; 35, ¶ 86-87 (citing Sevall, Exh. SS-2).

⁵⁸ PSP Brief at 35, ¶ 86 (“In performing his subsequently reversed Callback Adjustment . . .”).

⁵⁹ PSP Brief at 48, ¶ 123 (citing Kermode, TR. Vol. IV 575-576).

callback day was earned. Staff in no way suggested that this was a reasonable or desirable outcome and reaffirms that position on brief.

32 PSP further states that Staff “seemed . . . to consider a similarly deliberative approach to globally resolving the callback accounting issue in the same fashion and forum all parties appear to agree upon for a possible alternative to the presently unfunded deferred compensation plan for the pilots.”⁶⁰ At hearing, PSP asked Staff:

Q: Mr. Kermode, I think you understood my question, but it was akin to your recommendation about a study measured, studious approach to reforming potentially deferred compensation for pilots.

Recognizing that this is a similar thorny very expensive issue, would you be willing to consider with – with [follow through], not that the Commission could mandate, you know, participation by a board group to address this very troubling issue?

A: I’d be happy to participate. But I don’t think I would – I’m not going to pull – I’m not comfortable withdrawing my recommendation. But I would also, on the other hand, not be upset if the commission took that path.⁶¹

Staff did not alter its recommendation regarding callback liability at hearing and does not endorse a workshop to discuss callback liability. More to the point, Staff has argued that the entire historical callback liability should be excluded from rates, so a workshop would likely yield little, if any, fruitful discussion in the absence of clear direction from the Commission regarding the historic callback liability. As such, Staff recommends that the Commission resolve the callback issue and dispense with the notion of a workshop.

B. Comparability

1. PSP has not established a method for comparing the other pilotage districts to the Puget Sound Pilotage district and its proposed DNI is arbitrary

⁶⁰ PSP Brief at 48, ¶ 123. Staff interprets the reference to the “unfunded deferred compensation plan for the pilots” to refer exclusively to PSP’s pension plan.

⁶¹ Kermode, TR. Vol. IV 579:4-17.

33 The Commission should reject PSP’s comparability analysis with regard to DNI for three main reasons. First, while PSP has presented much data regarding other pilotage districts across the nation, PSP has not provided an analysis comparing other pilotage districts to the Puget Sound pilotage district. The Commission must determine rates that are fair, just, reasonable, and sufficient for the Puget Sound pilotage district specifically, therefore data regarding other pilotage districts’ compensation or target compensation is relevant to the Commission’s analysis only to the extent that it is comparable to that of the Puget Sound and PSP’s organization and rules. In doing so, it is important to acknowledge and account for the differences between pilotage districts in order to ensure that the districts alleged to be comparable are truly comparable. In response to Staff data requests regarding the alleged comparability of districts, PSP stated: (1) that it either did not have the information for a particular district, or (2) that it was in the process of attempting to acquire that information.⁶²

34 Second, PSP’s comparability analysis appears contradictory and subjective.⁶³ PSP states that “the unique nature of each pilotage district serves as one of the unifying similarities of pilotage service” and suggests that all pilots develop similar skill sets “even if the hazards they receive extensive training to avoid are unique.”⁶⁴ Despite this asserted commonality, PSP also states that it did not include information regarding port-employed pilots such as Grays Harbor, despite its relative geographic similarity, and Los Angeles because those pilots “face very little risk during an economic downturn.”⁶⁵ Additionally,

⁶² Carlson, Exh. IC-34X *passim*.

⁶³ See also, Staff Brief at 18-19, ¶ 35-36.

⁶⁴ PSP Brief at 20-21, ¶ 53. *But see*, Moreno, Exh. SM-1T at 6:20-21 (Q: Are piloting skills transferrable from one district to another? A: Ship handling knowledge and skills are transferable, *but pilotage is inherently local.*) (emphasis added).

⁶⁵ Carlson, Exh. IC-4Tr at 52:7-10. *But see*, IC-4Tr at 52:16-18 (“The only major differences between the different districts are the number of pilots that are required to complete the work required of them, and the individual workloads performed by their pilots.”).

Captain Quick testified at hearing that one of PSP’s comparison pilotage districts, the Lake Charles pilots, was not comparable to the Puget Sound based on the composition of the vessel traffic.⁶⁶

35 Third, PSP offers no analysis or explanation as to how it determined that a DNI of \$500,000 is reasonable based on a comparison to other pilotage districts beyond a conclusory assertion that the number is appropriate. At hearing, Captain Carlson testified that PSP choose a DNI of \$500,000 because it was trying “[t]o not shoot for that – the extreme high end, but not shoot for the low end.”⁶⁷ Given its lack of analysis, it is apparent that PSP’s recommended DNI is arbitrary and should be rejected by the Commission.⁶⁸

36 The Commission should reject PSP’s proposed DNI because PSP has not defined a method or criteria by which to compare pilotage districts. Nor has it carried its burden to show that its proposed DNI is fair, just, reasonable, and sufficient for the Puget Sound pilotage district based on a comparison to other pilotage districts. Finally, there is no legal requirement mandating the use of comparable compensation when setting pilotage rates for the Puget Sound.

2. There is no evidence of licensed pilots leaving the Puget Sound pilotage district or recruitment shortages based on compensation

37 While Staff acknowledges that pilot retention and recruitment are relevant considerations for the purpose of setting pilot compensation, the record does not demonstrate that PSP is currently experiencing any retention or recruitment problems. At hearing, Captain Carlson testified that he was not aware of any pilots who have surrendered

⁶⁶ Compare Quick, TR. Vol. III 292:5-11 (“I don’t think Lake Charles is a comparable port.”) with Carlson, Exh. IC-3 (including “last comparable net income” from Lake Charles Pilots).

⁶⁷ Carlson, TR. Vol. IV 385:20-22.

⁶⁸ See Staff Brief at 20-22, ¶ 38-43.

their pilots' licenses to work in other districts.⁶⁹ Additionally, pilots rarely transfer to work in another district.⁷⁰ Furthermore, the most recent Board annual report indicates that there is a pool of qualified candidates currently in or waiting to begin the pilotage training program.⁷¹ As such, the record in this case is distinguishable from the record before the Coast Guard in its 2016 ratemaking,⁷² which was “brimming” with comments regarding concerns that the Great Lakes pilots could not attract and retain candidates due to low compensation.⁷³ Attraction and retention of pilots is not an issue in the present case.

C. The Commission Should Determine That Staff's Proposed TAL, DNI, And Rate Design Are Reasonable

38 Staff is confident that its approach to determining a DNI and TAL is reasonable.

Reliance on historical data strikes an appropriate balance between acknowledging the Board's regulation and expertise, insofar as the Board's data reflects the realized operation of Board policy decisions and allowing the Commission to independently evaluate that information. Using a range of historical data allows the Commission to identify potential spikes or fluctuations in activity that may otherwise result in dramatic changes to the revenue requirement if the Commission were to limit its analysis to a single year. To the extent that such an approach provides greater stability and predictability for future rate-setting, Staff believes that this approach provides benefits to both PSP and ratepayers.

39 Staff's proposed approach to determining DNI is similar, in some respects, to the Coast Guard's approach in its recent rate-setting for the Great Lakes pilots, where it adjusted

⁶⁹ Carlson, TR. Vol. IV 381:17 – 382:4.

⁷⁰ Moreno, Exh. SM-1T at 6:12-16; Moreno, Exh. SM-5X at 14.

⁷¹ BR-5 at 17 (showing nine pilot candidates who have started training and an additional nine pilot candidates who have passed the pilotage exam that have not yet begun training).

⁷² PSP Brief at 14, ¶ 35.

⁷³ *Am. Great Lakes Ports Ass'n v. Zukunft*, 296 F.Supp.3d 27, 39-40 (D.D.C. 2017).

prior compensation for inflation, as does Staff's method.⁷⁴ Additionally, Staff notes that such an approach does not conflict with Board precedent. In response to a Staff data request, PSP stated that it "did not find *any* BPC minutes that expressly acknowledged that it established an income level based upon comparable income information."⁷⁵ By extension, using historical data adjusted for the rate-effective period does not conflict with Board precedent regarding the determination of pilot compensation.

40 Staff concludes that historical information provides an adequate basis on which to draw inferences about future trends and behavior. In the absence of extraordinary circumstances or intervening events, past information allows the Commission to approximate the conditions that will be reasonably necessary in the future.⁷⁶

41 Finally, the Commission should determine that Staff's rate design reflects a reasonable allocation of costs among ratepayers based on the principle of cost-causation rather than ability to pay. Under the principle of cost-causation, "costs should be paid by those who cause them to be incurred."⁷⁷ Staff maintains that the complete total distributable net income (TDNI) should be recovered through the hourly service rate because that directly compensates PSP for the time spent providing pilotage service. This also minimizes the phenomenon identified by PMSA wherein the tariff generates additional revenue even in the absence of a rate case because vessel size has increased over time. The Commission should

⁷⁴ Staff Brief at 23-24, ¶ 46 (citing Quick, Exh. GQ-7X at 4).

⁷⁵ Carlson, Exh. IC-35X at 4 (emphasis added).

⁷⁶ See *Pac. Nw. Transp. Serv. Inc., v. Wash. Utils. and Transp. Comm'n*, 91 Wn. App. 589, 596 (1997) ("("In virtually all aspects of life, one may estimate another's future conduct not only by observing it when it occurs, but also by drawing an inference, before it occurs, from past conduct of the same kind."); see also, *Id.* at fn. 11 (noting that the law authorizes consideration of past information when evaluating injunctions and witness credibility).

⁷⁷ *Wash. Utils. and Transp. Comm'n v. Waste Control, Inc.*, Docket TG-140560, Order 13, 11-12, ¶ 20 (August 6, 2015).

adopt a tariff that reflects the cost of the pilot, and require that each vessel using pilotage service bear that cost.

IV. THE COMMISSION SHOULD ADOPT STAFF'S RECOMMENDATIONS REGARDING PSP'S EXPENSES⁷⁸

A. The Commission Should Reject PSP's Transportation Adjustment

42

As stated in Staff's testimony, "[a] small-sample study of travel costs does not provide support for adjusting an entire year of costs, as factoring in costs from other months may affect average annual transportation costs. Instead Staff relies on the historical records as a fair representation of the costs."⁷⁹ Simply put, three months of targeted tracking of costs is inadequate when compared to historical test year records as a fair representation of the costs. Based on the information provided by PSP, the percentage change (or delta) for each year's transportation expenses from 2015 to 2019 is between -6.02 percent and 1.09 percent; allowing PSP's \$156,809 adjustment would result in an increase of almost 13 percent to transportation costs.⁸⁰ Staff believes that implementing a more transparent transportation expense charge would benefit all parties. However, adjusting an entire year of costs, reducing the transportation expense as a percentage of assignments by .07 percent, and imbedding a 13 percent increase to transportation expenses overall into rates for the rate year, based on a three-month study does not appear reasonable without additional analysis showing how representative the three-month period is relative to the entire year as shown in the table below:⁸¹

⁷⁸ Staff notes that PSP does not address Staff's remaining adjustments. As such, Staff recommends that the Commission adopt all of its remaining adjustments. LaRue, Exh. AMCL-2r2. Relatedly, the Commission should include revenue pertaining to the Board's self-insurance program. *See* Staff Brief at 29-31, ¶ 58-63.

⁷⁹ LaRue, Exh. AMCL-1Tr at 11:15-18.

⁸⁰ Norris, Exh. JN-07.

⁸¹ *See*, Norris, Exh. JN-07, Sevall, Exh. SS-2r2, BR-5 at 10.

Table 1

Transportation Expense							
R-17							
Transportation Expenses as a Percentage of Annual Assignments							
	2015	2016	2017	2018	2019	Pro Forma	
						PSP	Staff
Total Transportation Expenses	\$ 1,369,083	\$ 1,333,232	\$ 1,294,155	\$ 1,308,324	\$ 1,229,599	\$ 1,386,408	\$ 1,229,599
# of Assignments	7,788	7,660	7,250	7,324	6,999	6,989	6,989
% of Transportation Expense	0.57%	0.57%	0.56%	0.56%	0.57%	0.50%	0.57%
Transportation Expense per Annual Assignment							
	2105	2016	2017	2018	2019	PSP	Staff
Transportation Expense per Assignmen	\$ 175.79	\$ 174.05	\$ 178.50	\$ 178.64	\$ 175.68	\$ 198.37	\$ 175.93

43 Therefore, the Commission should reject PSP’s transportation expense adjustment R-17.

B. The Commission Should Determine That Staff’s Depreciation Adjustment For The Two Pilot Boats Is Reasonable

44 In regulatory accounting, the useful life of an asset is just as, if not more than, important as a set number of years used for the depreciation of an asset. Assets should be used and useful in order to be included in a depreciation schedule and in rates. Assets that are fully depreciated prior to the beginning of the rate year should always be removed from the depreciation schedule. Staff did not conclude or represent, “that [the *Puget Sound* pilot boat] has no depreciable value in the *test* year.”⁸² However, if an asset will be fully depreciated during the test period, such that it is fully depreciated by the rate effective period, including depreciation expenses in rates would imbed an expense into the rate effective period that no longer exists, unnecessarily increasing the revenue requirement. PSP claims that Staff “failed to give effect to the final six months of the vessel life.” However, the vessel would have been fully recovered under the current BPC tariff in effect. Therefore,

⁸² PSP Brief at 52, ¶133 (*emphasis added*).

Staff properly removed all assets that are fully depreciated and recovered prior to the start of the rate year.

45 For the *Juan de Fuca* pilot boat, Staff used a remaining life approach. Although PSP may not be familiar with this approach, the Commission has recognized this approach to depreciation for over 20 years.⁸³ Staff did not “simply double the remaining amortization period for the *Juan de Fuca* to four instead of two.”⁸⁴ Based on discussions with PSP and their representatives during the audit, Staff understood that PSP intends to replace both pilot boats in approximately four years.⁸⁵ Staff’s depreciation adjustments are reasonable and should be adopted by the Commission.

V. ADDITIONAL RECOMMENDATIONS

46 The Commission should further adopt Staff’s recommendations regarding PSP’s pension plan, filing requirements, and rate plan. Specifically, the Commission should: (1) direct PSP to hold a workshop with stakeholders regarding its pension plan and potential alternatives, (2) require PSP to submit its financial data, including any financial statements, using Generally Accepted Accounting Principles (GAAP) for any regulatory purpose before the Commission including future rate cases, and (3) decline to adopt a rate plan.⁸⁶

47 In its briefing, PMSA requests that the Commission conduct a performance audit of PSP’s expenses and administrative practices.⁸⁷ Although Staff agrees that the Commission should have access to as much relevant information as reasonably practicable, Staff is concerned that a performance audit could be construed as pre-approval of PSP’s expenses

⁸³ *In re Petition of U.S. West Communications, Inc.*, Docket UT-940641, 5th Supplemental Order, 6 (April 11, 1996) (“Under the remaining life depreciation method, a company’s depreciation rate is set to cover any deprecation reserve deficiency or surplus over the remaining lives of the plant and equipment.”).

⁸⁴ PSP Brief at 52, ¶ 133.

⁸⁵ LaRue, Exh. AMCL-1Tr at 10:1-2.

⁸⁶ Staff Brief at 31-33, ¶ 64-66.

⁸⁷ Initial Brief of Pacific Merchant Shipping Association, 44, ¶ 83.

and administrative practices, thereby impairing future prudence reviews by the Commission. Pre-approval “places the Commission in the position of actually protecting management from imprudent actions, thus seriously compromising management independence, and the arm’s length relationship between management and the Commission.”⁸⁸ Instead, the Commission generally considers what reasonable management would have done given the information that they knew or reasonably should have known at the time it made a decision.⁸⁹ In short, the Commission should not order a performance audit of PSP.

VI. CONCLUSION

48 The Commission should adopt Staff’s recommendations as articulated in its initial and reply briefing, its pre-filed testimony, and its testimony at hearing.

Respectfully submitted,

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⁸⁸ *In re Montana Power Co.*, 105 Pub. Util. Rep. 4th (PUR) 225, 272 (Mont. Pub. Serv. Comm’n Aug. 14, 1989); accord *In re Idaho Power Co.*, 152 Pub. Util. Rep. 4th (PUR) 490, 494 (Idaho Pub. Utils. Comm’n, June 3, 1994).Comm’n June 3, 1994).

⁸⁹ *Wash. Utils. & Transp. Comm’n v. Pac. Power & Light Co.*, Docket UE-152253, Order 12, 33, ¶ 94 (Sept. 1, 2016).