

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-220513

ORDER 08

FINAL ORDER REJECTING TARIFF
SHEETS; AUTHORIZING AND
REQUIRING COMPLIANCE FILING

Synopsis: The Commission rejects the tariff sheets filed by Puget Sound Pilots (PSP) on June 29, 2022. The Commission approves a total revenue requirement of approximately \$42.0 million which represents an annual revenue increase of approximately \$6.6 million or 19 percent. The Commission funds 56 pilots in rates and authorizes a distributed net income (DNI or target DNI) of \$475,733 per funded pilot, for a total DNI (TDNI) of approximately \$26.6 million. The Commission requires PSP to file revised tariff sheets to reflect this decision.

The Commission determines that PSP failed to provide sufficient data to support its comparability analysis, failed to establish that compensation levels are set too low to attract or retain qualified candidates, and failed to prove that its proposed target DNI will result in rates that are fair, just, reasonable, and sufficient. The Commission instead finds that a target DNI of \$475,733 per funded pilot results in fair, just, reasonable, and sufficient rates based on an inflation adjusted average of DNI distributions from 2017, 2018, and 2019.

The Commission continues to use its methodology for determining the number of funded pilots from PSP's last general rate case with modifications. The Commission determines that 56 pilots should be funded in the rate year to avoid penalizing PSP for temporary downturns in vessel traffic during the COVID-19 pandemic.

The Commission finds that PSP failed to comply with the Commission's order to conduct workshops regarding the transition to a fully funded, defined benefit retirement plan. The Commission instructs PSP to seek determinations from relevant federal agencies before seeking recovery of any costs associated with its proposed defined-benefit plan.

The Commission declines to reverse its earlier decision that pilots should fund their own medical insurance expenses through DNI.

We find that all vessels should be invoiced based on gross tonnage measured under the 1969 International Convention on Tonnage Measurement of Ship (GT ICT) on a

prospective basis but that TOTE Maritime Alaska, LLC (TOTE) should receive a refund of deferred revenues.

The Commission declines to adopt any automatic tariff adjusters in this proceeding.

The Commission accepts PSP's proposed adjustments for recovery of rate case specific legal expenses but finds that PSP failed to meet its burden to justify recovery of rapidly escalating "general" legal expenses.

We find that Staff's proposal for updating fuel costs is the most reasonable approach, and that it is consistent with the Commission's approach for other industries. We order PSP to make a compliance filing to update its fuel expenses using the most recent twelve-month period available, consistent with Staff's methodology.

The Commission accepts Staff's proposed adjustment for pilot training expenses.

The Commission finds that PSP again fails to justify its proposed changes to the pilot transportation charge and its proposed transportation expense, and fails to adequately address the concern with affiliated interest transactions discussed in the Commission's prior order.

We find that PSP should be allowed to recover \$20,000 related to DEI Outreach training but that costs related to DEI Donations are not known and measurable nor properly recoverable in rates.

The Commission adopts a new tonnage class for vessels under 2,000 gross tons but otherwise declines to adopt PSP's proposed changes to the harbor shift charges and cancellation charges.

We accept each of PSP's 18 uncontested restating and pro forma adjustments, finding that each is adequately supported by the record and should be approved without condition.

The Commission reiterates its instructions to the parties to participate in a Staff-led technical workshop to address rate of return methodology in the context of setting rates for pilotage service.

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I. BACKGROUND

A. PROCEDURAL HISTORY

- 1 On June 29, 2022, Puget Sound Pilots (PSP) filed with the Washington Utilities and Transportation Commission (Commission) revisions to its currently effective Tariff No. 1. PSP characterizes its filing as a general rate case. On July 15, 2022, the Commission entered Order 01, suspending the tariff filing and setting the matter for adjudication.
- 2 On August 26, 2022, the Commission entered Order 03, Prehearing Conference Order; Notice of Hearing (Order 03). Among other things, Order 03 granted petitions to intervene filed by Pacific Merchant Shipping Association (PMSA) and TOTE.
- 3 On October 18, 2022, the Commission entered Order 04, Granting Motion for Leave to Reply; Granting Motion to Supplement the Record (Order 04). The Commission granted PSP's motion to supplement the record with additional exhibits from its accounting witness Weldon T. Burton subject to the condition that all remaining deadlines in the case, including the evidentiary hearing, were continued by six weeks.
- 4 On October 31, 2022, PSP filed supplemental testimony and exhibits for its witness Burton.
- 5 On November 23, 2022, the Commission issued a Notice of Revised Procedural Schedule, continuing the evidentiary hearing to April 5-6, 2023, and continuing the other remaining procedural deadlines in this case.
- 6 On February 9, 2023, the Commission entered Order 05, Rejecting Stipulation and Providing Further Process. The Commission rejected PSP's and TOTE's joint proposal to file cross motions for summary judgment and instead required PSP and TOTE to file a joint statement of material facts by March 17, 2023.
- 7 On February 10, 2023, Commission staff (Staff),¹ PMSA, and TOTE filed responsive testimony.

¹ In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judge, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

- 8 On February 17, 2023, the Commission entered Order 06, Granting Motion for Leave to Reply; Denying Motion Requesting that the Commission Seek a Determination from the Board of Pilotage Commissioners. The Commission rejected PSP's request that the Commission seek a determination from the Board of Pilotage Commissioners (BPC) as to whether the "best achievable protection" standard set forth in RCW chapter 90.56 also applies to the BPC's regulation of pilotage.
- 9 On March 3, 2023, PSP filed rebuttal testimony. This same day, Staff and PMSA filed cross-answering testimony.
- 10 On March 14, 2023, PMSA filed a Motion to Strike testimony from PSP's witnesses Bruce J. McNeil and Christopher R. Wood.
- 11 On March 15, 2023, PMSA filed a Motion to Strike Non-Rebuttal Testimony.
- 12 On March 21, 2023, PSP filed a Motion to Compel Discovery.
- 13 On March 23, 2023, PSP and TOTE filed a Joint Stipulation of Facts.
- 14 On March 24, 2023, PSP filed supplemental testimony and exhibits.
- 15 On March 27, 2023, Staff filed a Motion in Limine.
- 16 On March 28, 2023, PSP filed an Emergency Motion in Limine.
- 17 On March 29, 2023, the Commission entered Order 07, Setting Time for Response to PSP's Emergency Motion in Limine.
- 18 On March 30, 2023, the Commission held a public comment hearing. The Commission heard comments from 7 members of the public.
- 19 On April 4, 2023, PSP filed a Motion for Leave to File Corrected Testimony of David Lough.
- 20 The Commission convened a virtual evidentiary hearing before the Commissioners and Administrative Law Judge Michael Howard on April 5, 6, and 7, 2023. The Commission granted Staff's Motion in Limine and rejected PSP's Exhibits SB-11T; SB-12; SB-13; SB-14; JN-6T; JN 7; SM-8T; SM-9; SM-10; and SM-11. The Commission denied PMSA's Motion to Strike testimony from PSP witnesses Wood and McNeil. The Commission granted PMSA's Motion to Strike Non-Rebuttal Testimony, rejecting Bendixen Exh. SB-9T, page 7, line 20, page 8, line 10; Captain Carlson, Exh. IC-8T,

page 19, line 21 through page 20, line 6; Titone, Exh. MJT-1T page 9, lines 16 through 25; Diamond, Exh. CLD-4T page 2, line 19 through page 4 line 14. The Commission granted PSP's Motion for Leave to Reply in support of PSP's Motion to Compel Discovery but denied PSP's Motion to Compel Discovery. The Commission granted PSP's Emergency Motion in Limine, finding that a memorandum prepared by PSP witness Walter Tabler on March 2, 2021, was subject to the opinion work product doctrine. The Commission denied PSP's Motion for Leave to File Corrected Testimony from its witness David Lough.

- 21 The Commission rejected other exhibits based on evidentiary objections made during the hearing. Specifically, the Commission rejected (1) page 19, line 21 through page 20, line 6 of Carlson, Exh. IC-8Tr; (2) page 25 of Exhibit IC-18X; (3) page 7, line 20 through page 8, line 10 of SB-9T; (4) Captain Sandy Bendixen exhibits SB-11T through SB-14; (5) Magen Brooks exhibits MB-1T through MB-5; (6) Jessica J. Norris exhibits JJN-6T and JJN-7r; (7) page 2, line 19 through page 4, line 14 of Diamond, Exh. CLD-4T; (8) Sean McCarthy Exh. SM-8T through SM-11; and (9) page 9, lines 16 through 25 of Titone, Exh. MJT-1T. The Commission otherwise admitted into evidence all pre-filed testimony and exhibits, as well as cross-examination exhibits.
- 22 On April 19, 2023, Staff filed a revised comment matrix showing that the Commission received a total of 12 written public comments, with seven in favor of the proposed rate increase, three opposed, and two undecided.
- 23 On April 28, 2023, the parties filed initial post-hearing briefs.
- 24 On May 12, 2023, the parties filed reply briefs.
- 25 Michael E. Haglund, Julie Weis, and Eric E. Brickenstein, Haglund Kelley LLP, Portland, Oregon, represent PSP. Nash Callaghan and Jeff Roberson, Assistant Attorneys General, Lacey, Washington, represent Staff. Michelle DeLappe, Fox Rothschild LLP, Seattle, Washington, represents PMSA. Steven W. Block, Lane Powell PC, Seattle, Washington, represents TOTE.

B. CASE OVERVIEW

26 This case represents PSP’s second general rate case before the Commission. PSP proposes an overall additional annual increase of approximately \$15.0 million, or 42.3 percent.² PSP’s filing raises several significant issues, described below.

1. Pilot Compensation

27 The most significant driver of the proposed 42.3 percent rate increase is the requested increase to pilot compensation or Distributed Net Income (DNI or target DNI). PSP states that its organization ranked last in pilot compensation when compared to the 13 pilot groups with publicly available data across the U.S.³ In its last GRC, the target DNI was set at \$400,855 per pilot for the 2021 rate year, and at \$410,075 for the 2022 rate year which is PSP’s currently authorized target DNI.⁴ PSP’s actual DNI distributions have fallen substantially in 2020 and 2021, to \$204,580 and \$295,616, respectively.⁵ In this case, PSP retained compensation expert David Lough, who performed a salary study that compares pilot compensation levels across the U.S. and adjusts for cost-of-living factors. Based on this analysis, PSP proposes a target DNI of \$574,087 per pilot.⁶ PSP also proposes an increase to the number of funded pilots, from 52 to 56, which represents the full number authorized by the BPC.⁷

2. Retirement Program

28 In PSP’s last GRC, the Commission ordered PSP to initiate discussions with interested parties, namely PMSA, to work with a mutually acceptable third-party retirement expert to negotiate a plan to transition from a pay-as-you-go (pay-go) retirement system to a fully funded defined benefit plan.⁸ PSP submits that it has reached an agreement with other interested parties, Pacific Yacht Management and Northwest Marine Trade Association. PSP intends to transition its future retirees to a Management Employees

² See PSP Response to Bench Request #1-2 (“Results of Operations”).

³ Lough, Exh. DL-01T at 11:17-22.

⁴ *WUTC v. Puget Sound Pilots*, Final Order 09 Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing (TP-190976), at ¶¶ 462-463.

⁵ Norris, Exh. JJN-01T at 5:1-2.

⁶ Lough Exh. DL-25T at 6:15-16.

⁷ Carlson, Exh. IC-1T at 15:11-17.

⁸ *WUTC v. Puget Sound Pilots*, Docket TP-190976, Final Order 09 Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing ¶¶ 191-193 (November 25, 2020) (Final Order 09).

Pension Plan (MEPP) while continuing to fund its current retirees using the pay-go methodology.⁹ To fund these two retirement systems, PSP has proposed to recover the costs through two annual automatic adjusters, which would be assessed on a per-ton basis.¹⁰

3. Medical Insurance Benefits

29 In PSP's last GRC, the Commission began to phase out the pilots' medical insurance benefits from tariff rates because the pilots are independent contractors whose medical insurance should be the responsibility of the individual pilots, not ratepayers.¹¹ In year two of the rate plan, pilot medical insurance expenses, recovered through tariff rates, were reduced by 50 percent.¹² Medical insurance expenses for PSP's staff and employees were allowed to remain in tariff rates.¹³ In this case, PSP proposes that these costs be added back to its operating expenses and recovered through its tariff rates. To justify this change, PSP cites comparisons with other pilotage districts, which predominantly fund medical benefits through tariff rates and do not shift the costs to the individual pilots.¹⁴

4. Proposed Automatic Tariff Adjusters

30 PSP proposes five automatic tariff adjusters to "better match tariff revenues with actual pilotage system costs and to reduce the frequency of general rate cases."¹⁵ These adjusters include a "Quarterly New Licensee/Retiree Adjuster," an "Annual Pay-As-You-Go Pension Adjuster," and an "Annual Funded Pension Adjuster."¹⁶ PSP also proposes an "Annual Traffic Adjuster," which would seek to increase or decrease rates proportionate to the difference between actual vessel movements and the assumed level

⁹ Carlson, Exh. IC-1T at 22:15-23:18.

¹⁰ *Id.* at 30:7-13.

¹¹ Final Order 09 ¶¶ 469-471.

¹² *Id.*

¹³ *Id.* at ¶ 249.

¹⁴ Carlson Exh. IC-1T at 10:21-11:3.

¹⁵ *Id.* at 3:23-4:2. Two of the initially proposed automatic adjusters, the Pilot Station/Pilot Boat Capital Cost Adjuster and the Annual Pilot Station/Pilot Boat Expense Adjuster, were withdrawn in rebuttal. *See* Carlson, Exh. IC-8T at 18:17-19.

¹⁶ *Id.* at 30:22-31:18

of 7,442 vessel movements as proposed in the case, as well as an “Annual Cost-of-Living Adjuster.”¹⁷

5. Callback Days and Associated Liability

31 Final Order 09 required full accrual method accounting of PSP’s liability for off-book “callback days,” which pilots earn after accepting a callback assignment outside of their normal watch schedule.¹⁸ PSP submits that it has implemented accrual method accounting for its callback days and that it has begun to fund them at a rate of \$1,198 per callback day.¹⁹ On rebuttal, PSP concedes that its revenue requirement should be reduced by approximately \$400 thousand to properly account for callbacks.²⁰

C. SUMMARY OF REVENUE REQUIREMENT DETERMINATIONS

32 The Commission authorizes total annual revenue of approximately \$42.0 million, which represents an annual revenue increase of approximately \$6.6 million or 18.5 percent. The Commission funds 56 pilots in rates and authorizes a DNI of \$475,733 per funded pilot, for a total DNI (TDNI) of approximately \$26.6 million.

33 The Commission finds that PSP failed to conduct workshops on its retirement plan as ordered by Final Order 09. The Commission instructs PSP to seek favorable determination letters from relevant federal agencies for its proposed MEP and otherwise reserves any ruling on the recovery of MEP costs. The Commission allows PSP to recover approximately \$450,000, one-half of its proposed pro forma adjustment of approximately \$900,000 for continuing its current pay-go pension.

34 The Commission maintains its finding from Final Order 09 that pilots should fund their individual health insurance through DNI.

35 The Commission determines that all vessels should be invoiced based on GT ICT on a prospective basis and that TOTE should receive a refund of the deferred incremental difference in revenue.

¹⁷ *Id.*

¹⁸ Final Order 09 ¶ 236.

¹⁹ Carlson, Exh. IC-1T at 15:20-16:10.

²⁰ Burton, Exh. WTB-08T at 6:11-16.

36 The Commission finds that PSP failed to meet its burden to justify recovery of its rapidly escalating general legal expenses and failed to respond to the concerns noted in Final Order 09 on this same issue and should be disallowed.

37 The Commission finds that certain consulting expenses from Tabler and RedCloud should be disallowed at the present time.

38 The Commission finds that PSP again failed to justify its request for recovering a broader range of pilot transportation expenses, which represents a more generous system of reimbursement than historical practice and should be disallowed.

39 The Commission allows PSP to recover \$20,000 in DEI Outreach training expenses but disallows its request to recover DEI Donations as these costs are not recoverable in rates.

40 The Commission authorizes the following adjustments:

- PSP’s adjustments for general rate case expenses;
- PSP’s proposed restating adjustment for its PPP loan;
- Staff’s proposed adjustments for pilot training expenses; and
- PSP’s 18 uncontested restating and pro forma adjustments.

41 The Commission declines to approve significant changes to PSP’s rate design, except for approving a new tonnage class for vessels under 2,000 gross tons.

II. DISCUSSION AND DECISION

A. COMMISSION REGULATORY AUTHORITY

42 The Board of Pilotage Commissioners (BPC) is generally charged with the administration and enforcement of the Washington Pilotage Act.²¹ Among other duties, the BPC establishes a comprehensive pilot training program and issues pilot licenses.²² The BPC must also “[d]etermine from time to time the number of pilots necessary to be licensed in each district of the state to optimize the operation of a safe, fully regulated, efficient, and

²¹ RCW 88.16.035(1).

²² *Id.*

competent pilotage service in each district.”²³ Until recently, the BPC determined the rates charged for pilotage services.²⁴

43 Effective July 1, 2019, the Legislature transferred the BPC’s jurisdiction over rate-setting to the Commission.²⁵ Thus, the Commission is charged with determining the rates for pilotage services.²⁶ The Commission “shall ensure that the tariffs provide rates that are fair, just, reasonable, and sufficient for the provision of pilotage services.”²⁷ The Legislature did not transfer the BPC’s jurisdiction over training, licensure, or other aspects of the Pilotage Act to the Commission. These issues are still properly brought before the BPC.

B. STANDARD OF REVIEW

44 In any general rate proceeding, the Commission’s ultimate goal is to set rates that are *fair* to customers and to the company’s shareholders; *just* in the sense of being based solely on the record developed in a rate proceeding; *reasonable* in light of the range of possible outcomes supported by the evidence; and *sufficient* to meet the needs of the company to cover its expenses and attract necessary capital on reasonable terms.²⁸ The burden of proof is placed on the pilotage association filing the proposed tariff changes.²⁹

45 When setting rates, the Commission must include certain items. The tariff for pilotage services must include a surcharge to support the BPC’s training program and to support the stipend paid to pilotage trainees.³⁰ Through June 30, 2023, the tariff was also required to include a \$16.00 surcharge per assignment to fund the BPC’s self-insurance premiums.³¹

²³ RCW 88.16.035(1)(d).

²⁴ Laws of 2018, ch. 107 §§ 3-8.

²⁵ *Id. Accord* RCW 81.116.020(1).

²⁶ Laws of 2018, ch. 107 §§ 3-8.

²⁷ RCW 81.116.020(3).

²⁸ *WUTC v. Avista Corp., d/b/a Avista Utils.*, Dockets UE-160227 and UG-160228, Order 06 ¶ 79 (Dec. 15, 2016).

²⁹ RCW 81.116.030(5).

³⁰ RCW 81.116.020(4). *See also* RCW 88.16.035(2) (providing that the BPC may pay a stipend to trainees).

³¹ WAC 363-116-301(2).

46 The Commission may include other charges as well. The Commission may include its own reasonable costs to set pilotage rates,³² and may consider pilot retirement expenses incurred in the prior year.³³

47 The Commission may also fix extra compensation “for extra services to vessels in distress, for awaiting vessels, for all vessels in direct transit to or from a Canadian port where Puget Sound pilotage is required for a portion of the voyage, or for being carried to sea on vessels against the will of the pilot, and for such other services as may be determined by the board.”³⁴

48 In PSP’s first general rate case before the Commission, in Docket TP-190976, the Commission established a rate-setting methodology for the pilotage industry and made foundational determinations. The Commission applied its traditional cost-of-service ratemaking methodology to the pilot industry, determined an appropriate total revenue requirement formula, and explained this framework at some length.³⁵ The Commission also determined that PSP’s customers are the shippers – represented by PMSA and other industry associations.³⁶ The Commission has also found that because the pilots are the equivalent of PSP’s owners and shareholders, the ability to attract “necessary capital on reasonable terms” relates to PSP’s ability to attract and retain pilots to perform essential pilotage service in the Puget Sound pilotage district.³⁷ In this case, we carry forward the rate-setting methodology and framework established by Final Order 09 with minor modifications, providing specificity on calculating additional annual revenue.³⁸

49 The Commission again emphasizes that it must adhere to its proper role as the *economic regulator* of the state pilotage system. The rate-setting process must establish fair, just, reasonable, and sufficient rates to support the number of pilots authorized by the BPC and to allow for recovery of other reasonable and prudent costs incurred by the pilot association. We must respect and support the BPC’s jurisdiction as the safety regulatory and licensing authority. The BPC must determine the number of authorized pilots, any appropriate target assignment levels, appropriate rest rules, and any other safety-related

³² RCW 81.116.060.

³³ RCW 81.116.020(4). *Accord* RCW 88.16.055.

³⁴ *Id.*

³⁵ Final Order 09 ¶¶ 54-68

³⁶ Final Order 09 ¶ 43.

³⁷ *Id.*

³⁸ *See* Attachment A for calculating additional annual revenue.

obligations. Rate cases before the Commission are an opportunity for PSP to recover the costs of providing these pilotage services, not what those services should be.

- 50 Bearing this understanding in mind, we note that PSP has provided extensive testimony on the challenges facing pilots, their importance to protecting the Puget Sound, and the hazards faced in their profession. We comment on this testimony before turning to the contested adjustments and other rate-setting issues.
- 51 To begin, we must acknowledge the importance of the compulsory pilotage system and the critical role that pilots play in preventing oil spills and other catastrophes. PSP witness Captain Eric Klapperich explains, for example, that “Pilots are acutely aware of the ecological sensitivity of Puget Sound and the massive catastrophe that could result from an oil spill or other serious maritime accident.”³⁹ Captain Klapperich continues, “Simply put, our job – 24 hours a day, 365 days a year – is to prevent that type of devastating event from happening.”⁴⁰ PSP also submits a study of Canada’s pilotage system demonstrating that “[t]he incident-free rate for piloted vessels has consistently stood at 99.9%” and that “the contribution to safety arising from the provision of pilotage services has a cost benefit ratio of 18.9 to 1.”⁴¹
- 52 There is essentially no dispute in the record as to the importance of pilots to both safety and environmental protection. As PMSA witness Metcalf observed at the hearing, the role of pilots in the United States is “not debatable” and pilots are a “critical element in maintaining the safety and environmental responsibility of any vessel, regardless of flag, operating in U.S. waters.”⁴²
- 53 We must also acknowledge that pilots carry out their responsibilities at great personal risk. Because pilots rely on ladders to board incoming vessels, Captain Bendixen explains that “embarking and disembarking ships is both a life-threatening exercise and a necessary part of pilots’ day-to-day commute to their job.”⁴³ Clayton Diamond likewise notes that “[m]any who are not in and around the profession on a regular basis don’t

³⁹ Klapperich, Exh. ECK-1T at 6:24-26.

⁴⁰ *Id.* at 7:1-2.

⁴¹ Eriksen, Exh. KAE-3 (“Marine Pilotage in Canada: A Cost Benefit Analysis” (March 2017)).

⁴² Metcalf, TR 522:6-10.

⁴³ Bendixen, SB-1T at 18:3-4.

always appreciate the serious physical risks associated with piloting” and that pilots are killed in the line of duty “with alarming regularity.”⁴⁴

54 A great deal of testimony in this case was related to issues that properly fall within the BPC’s jurisdiction. Insofar as this evidence is relevant to the Commission as the *economic regulator*, we give it weight as supporting the reasonableness of the pilots’ relatively high compensation compared to other mariners. It supports the reasonableness of pilot DNI distributions under the BPC-authorized tariff, which the Commission has incorporated into its findings, and the reasonableness of the revenue requirement approved in this Order. But as we explain below in Section C.1, the evidence does not establish that absolute risks are increasing for the pilotage profession.

55 PSP has also raised extensive legal arguments disputing the legal standard for this proceeding and the Commission’s proper role as the economic regulator. We comment on these arguments as well.

56 Specifically, PSP has argued that Washington’s laws are grounded in trust principles, that the state’s responsibility requires nothing less than the “best achievable protection” against oil spills, and that the state has adopted a zero spills strategy.⁴⁵ But as we have explained, a general rate case before the Commission is an opportunity to recover actual costs, not to determine what the scope of pilotage services should be or to recover costs that are not known and measurable. It remains PSP’s burden to prove the need for any rate increases before the Commission. The prudence of any costs is appropriately considered in light of all of the facts and the applicable laws, which would include any environmental protection laws relevant to pilotage. Similar reasoning would apply to other industries that bring rate cases before the Commission.

57 PSP also argues that the fair, just, reasonable, and sufficient standard “should be construed to embrace maximizing the accident-prevention capability of the compulsory pilot system, whether or not the Commission decides to formally apply the ‘best achievable protection’ standard.”⁴⁶ This is not precisely correct. The fair, just, reasonable, and sufficient standard is clearly set forth in statute, and the legislature delegated the rate-setting function to the Commission in “very broad terms” by using this statutory

⁴⁴ Diamond, Exh. CLD-1T at 11:4-10.

⁴⁵ *E.g.*, Costanzo, Exh. CPC-1T at 11:17-24:14.

⁴⁶ PSP Brief ¶ 38.

language.⁴⁷ These legal standards are not ambiguous or subject to serious dispute.⁴⁸ We direct PSP to paragraph 44 for the Commission's explanation of the fair, just, reasonable, and sufficient standard.

58 It is unclear, at the present time, how the best achievable protection standard affects PSP's cost of service.⁴⁹ PSP witness Costanzo was not able to identify any costs that the association incurred specifically to meet the best achievable protection standard; therefore, PSP has not demonstrated that current rates are insufficient for recovering these costs, either.⁵⁰ Although the legislature recently amended the Pilotage Act to require tug-escort rulemakings in light of the best achievable protection standard,⁵¹ this rulemaking is still pending. We therefore conclude that the best achievable protection standard and other environmental laws cited by PSP have only a limited, indirect relevance to the rate setting process.

59 PSP has also challenged the finding that shippers are its customers.⁵² We find this unpersuasive and incorrect. While pilots have positions of great trust and responsibility to the public, the Commission found in Final Order 09 that it "must seek to ensure fair prices and services for customers while assuring that the regulated entity remains fiscally sound and able to continue its operations, with the opportunity to earn a return on its investments."⁵³ The Commission also found that "[i]n this context, the customers are the shippers," who were represented by PMSA and Pacific Yacht Management in the first rate case.⁵⁴ We find no reason to disturb these findings in this case. PMSA, TOTE, and other intervenors who represent vessels subject to compulsory pilotage are the ratepayers and therefore the customers for purposes of rate-setting. To the extent that PSP witness

⁴⁷ See *People's Org. for Wash. Energy Res. v. WUTC*, 104 Wn.2d 798, 808 (Dec. 12, 1985).

⁴⁸ For the same reasons, we reject any suggestion that the best achievable protection standard should be used as "the appropriate standard to guide the rate-setting process in a pilotage case." Costanzo, Exh. CPC-22T at 2:19-20.

⁴⁹ To the extent PSP raises the best achievable protection standard as a justification for higher DNI, this issue is discussed below in Section C.1.

⁵⁰ Costanzo, TR. at 226:10-227:17.

⁵¹ RCW 88.16.250(3)(a), .260(3)(d).

⁵² Costanzo, Exh. CPC-22T at 2:9-11.

⁵³ Final Order 09 ¶ 35 (citing *People's Org. for Wash. Energy Res. v. WUTC*, 104 Wn.2d 798, 808 (Dec. 12, 1985)).

⁵⁴ *Id.* ¶ 43.

Costanzo ties the pilots' public responsibilities to the issue of DNI,⁵⁵ we address this below in Section C.1.

- 60 In future proceedings, we encourage PSP (1) to focus its case on issues that are properly within the Commission's jurisdiction, (2) to fully develop its proposals for adjustments and any automatic tariff adjusters in direct testimony, rather than waiting until rebuttal testimony,⁵⁶ (3) to avoid submitting foundational changes to its revenue requirement model months into the rate case, and (4) to carefully evaluate any assertions of privilege in objections to data requests. The Commission may not be able to extend the time for its review in future proceedings, as was done in this case following the submission of PSP's supplemental testimony. The Commission may also in the future choose to dismiss a rate case for failure to follow Commission instructions and requirements.
- 61 The Commission also encourages both PSP and PMSA to (1) take advantage of discovery conferences and (2) avoid the last-minute motions practice that occurred in this case. We expect litigating parties to work with each other in good faith. If PSP and PMSA continue these strong-armed tactics in future proceedings, the Commission may resort to harsh remedies.
- 62 We also reiterate our expectation that the parties should participate in a Regulatory Staff-led technical workshop to address rate of return methodology in the context of the pilotage industry.⁵⁷ Such a workshop may help to narrow the scope of disagreement in future cases and ultimately save litigation costs. The Commission expects Staff to conduct this technical workshop within six months of the entry of this Order. Staff should submit progress reports to the Commission every two months until the technical

⁵⁵ See Costanzo, Exh. CPC-22T at 2:13-18.

⁵⁶ As discussed in the Commission's Final Order 09 in PSP last general rate case, we continue to require restating adjustments to the test year to "adjust the booked operating results for any defects or infirmities in actual recorded results of operations that can distort test period earnings. Restating adjustments are also used to adjust from an as-recorded basis to a basis that the commission accepts for determining rates. Examples of restating adjustments are adjustments to remove prior period amounts, to eliminate below-the-line items that were recorded as operating expenses in error, to adjust from book estimates to actual amounts, and to eliminate or to normalize extraordinary items recorded during the test period."

We also require pro forma adjustments to only inform the test period for "all known and measurable changes that are not offset by other factors. The company's initial filing must identify dollar values and underlying reasons for each proposed pro forma adjustment."

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⁵⁷ Final Order 09 ¶ 493. See also Burton, Exh. WTB-8T at 2:20-21.

workshop takes place, describing its steps towards planning the workshop. Staff should submit one final progress report describing any areas of agreement or disagreement among interested parties following the technical workshop.

C. REVENUE REQUIREMENT: CONTESTED ISSUES

63 In Final Order 09, the Commission considered various proposals for establishing PSP’s total authorized revenue or total revenue requirement. Finding that PSP was not a rate base (or asset investment) intensive organization, the Commission adopted Staff’s proposed total revenue requirement formula for PSP.⁵⁸ Specifically, pilot compensation, or target DNI, is the primary element in the formula and to some extent, is akin to the company’s opportunity to earn a return. The formula provides:

$$\text{Total Revenue Requirement} = \text{Expenses} + \text{Depreciation} + \text{Interest} + \text{TDNI}^{59}$$

64 Because the parties do not challenge the revenue requirement formula established in Final Order 09, we provide an overview of the parties’ competing proposals for pilots’ DNI and PSP’s total revenue requirement. Additionally, we establish the calculations for additional annual revenue requirement and the percentage increase based on the formula above.

Table 1: Revenue Requirements and TDNI Summary

	PSP	Staff	PMSA		
Rate Year	RY 1	RY1	RY1	RY2	RY3
Total Proposed Revenue⁶⁰	\$50.5 mil. ⁶¹	\$40.9 mil. ⁶²	N/A	N/A	N/A
Additional Annual Revenue	\$15.0 mil. ⁶³	\$5.6 mil. ⁶⁴	N/A	N/A	N/A

⁵⁸ *Id.* ¶ 64.

⁵⁹ *Id.* ¶ 60.

⁶⁰ These figures represent the parties’ proposed total revenue requirement, not additional annual revenue requirement as provided in the next row of the table. *See* Attachment A for the calculation additional annual revenue requirement.

⁶¹ PSP Brief ¶ 50, ¶ 99.

⁶² *See* Simmons, Exh. JNS-2r.

⁶³ *See* PSP Response to Bench Request #1-2 (“Results of Operations”).

⁶⁴ *See* Staff Response to Bench Request, Attachment 1 (“JNS-02, Sch. 1.1 Results of Oper”).

Percentage Increase ⁶⁵	42.3 %	16.0 %	N/A	N/A	N/A
Target DNI	\$574,087 ⁶⁶	\$410,075 ⁶⁷	\$346,391 ⁶⁸	\$357,475	\$368,914
Number of Pilots	56	56	54.9	55	56
Add: Medical Ins.	---	\$1.9 mil. ⁶⁹	---	---	---
TDNI	\$32.1 mil.	\$24.8 mil.	\$ 19.0 mil.	\$ 19.7 mil.	\$20.7 mil.

65 Going forward the Commission requires that in addition to total revenue requirement, parties must also provide additional annual revenue requirement and the related percentage increase using the methodology in Attachment A. These formulae are:

Additional Annual Revenue Requirement = TDNI – Pro forma Results of Operations (ROO)⁷⁰ x Gross-up Factor

Percentage Increase = Additional Annual Revenue Requirement / Pro Forma Revenue⁷¹

66 The parties’ specific arguments regarding how medical, retirement, and other expenses should be reflected in PSP’s total revenue requirement are discussed in detail below.

1. Pilot Compensation

67 In PSP’s last rate case, the Commission approved a per-pilot DNI based on Staff’s recommended methodology, which used a five-year historical average of actual per-pilot DNI adjusted for inflation.⁷² The Commission determined a DNI of \$400,855 in rate year one and a DNI of \$410,075 in rate year two.⁷³

⁶⁵ Derived from applying formula referenced in ¶66, (Additional Annual Revenue Requirement / Pro Forma Revenue, as reflected in most recent ROO for each respective party).

⁶⁶ Lough, Exh. DL-25T at 7:10-11.

⁶⁷ Staff Reply Brief ¶ 7.

⁶⁸ Moore, Exh. MM-1T at 17:5-9 (proposing pilot DNIs over a three-year rate plan).

⁶⁹ Young, Exh. MY-1T at 23-24:16-8.

⁷⁰ Pro forma Results of Operations. This refers to total revenues, after restating and pro forma adjustments, less total expenses, after restating and pro forma adjustments.

⁷¹ Pro Forma Revenue refers to total revenue, after restating and pro forma adjustments.

⁷² Final Order 09 ¶ 140.

⁷³ *Id.* ¶ 461-462.

- 68 In this case, PSP requests a per-pilot DNI of \$574,087 based on the results of a comparability analysis with other pilotage associations across the U.S.⁷⁴
- 69 PSP’s President Captain Carlson offers an example from the Great Lakes Pilotage group, which lost 22 percent of its pilots between 2007 and 2014 due to “low pay and excessive work,” with many pilots leaving to work at associations in the Gulf states, which offered better compensation.⁷⁵ Captain Carlson submits that the “currently low morale level within PSP will drop even further” should the Commission decide “to maintain PSP’s DNI at low levels compared to other pilotage grounds.”⁷⁶
- 70 PSP’s Executive Director Charles Costanzo argues that pilots’ ultimate responsibility is to serve the public interest through safe and environmentally sound marine commerce in order to achieve the legislatively mandated “best achievable protection” standard.⁷⁷ The Commission’s underlying rate considerations should produce rates that are “fair, just, reasonable and sufficient in meeting best achievable protection goals.”⁷⁸ To accomplish this, PSP argues that it must offer nationally competitive compensation to its pilots in order to attract and retain a highly diverse mix of the “best of the best” mariners.⁷⁹
- 71 Constanzo specifically argues that the “best achievable protection” standard set forth in RCW chapter 90.56, which concerns Washington State Department of Ecology’s (DOE) policy for preventing oil spills, also applies to PSP’s pilotage service standards through its regulation by the BPC and, therefore, the Commission must authorize rates that are sufficient to achieve this standard.⁸⁰ Constanzo interprets this standard as requiring the pilotage system to be adequately staffed “sufficient to minimize call backs and protect pilot rest periods that are crucial to safe navigation,” and “funding a competitive compensation package that will attract and retain top candidates from an extraordinarily small national pool.”⁸¹ Constanzo argues that the best achievable protection standard was adopted in a 2019 amendment to the Pilotage Act (codified as RCW 88.16.260) that

⁷⁴ Lough, Exh. DL-25T at 7:9-14.

⁷⁵ Carlson, Exh. IC-08T at 24:1-21.

⁷⁶ *Id.* at 23:4-17.

⁷⁷ Costanzo, Exh. CPC-21T at 2:7-18.

⁷⁸ *Id.* at 3:5-10.

⁷⁹ Carlson, Exh. IC-1T at 8:15-19.

⁸⁰ Costanzo, Exh. CPC-01T at 26:19-26.

⁸¹ *Id.* at 27:1-9.

requires the BPC to conduct a rulemaking on tug escort rules in collaboration with DOE, which “must be designed to achieve best achievable protection.”⁸²

72 Costanzo argues further that the global shipping industry is imposing pervasive risk to the pilots due to tactics such as the use of “flags of convenience, single vessel shell entities, and last voyage flags for the specific purpose of evading compliance with regulatory standards and externalizing tort liability.”⁸³

73 PSP also provides testimony from compensation expert David Lough, who performed a pilot compensation comparability analysis based on publicly available financial statements and rate orders from 13 of the 50 pilotage districts across the country, including PSP.⁸⁴ Lough submits that “PSP must offer net income levels comparable to the premier U.S. pilot groups,” and that [f]ailure to match DNI to competitively-aligned net income will, in my opinion, create undue and undesirable risk to PSP’s ability to attract a share of the best pilot trainee candidates in the U.S. and achieve the workforce diversity needed for success.”⁸⁵

74 Lough asserts that the pilotage districts included in the analysis are a reasonable and representative sample of pilot income and benefits because together they represent 42 percent of the total number of pilot licenses, excluding PSP, in the country.⁸⁶ Lough adjusted the reported net income figures by the associated cost-of-living inflation measure attributable to each pilotage group’s tariff, or when not applicable by 2.5 percent, to arrive at projected 2023 DNIs.⁸⁷ Lough also indicates whether medical insurance is funded within each pilotage tariff as well as the pension accrual percentage and pension funding methodology.⁸⁸

75 To recognize cost-of-living differences between the various pilotage districts studied, Lough applied a cost-of-living adjustment to each projected 2023 net income figure to

⁸² *Id.* at 25:13-18. *See also* RCW 88.16.260(3)(d).

⁸³ Costanzo, Exh. CPC-21T at 6:24-7:2.

⁸⁴ Lough, Exh. DL-01T at 3:13-17. An additional pilotage ground, St. John’s Bar Pilots, was added in rebuttal. *See* Lough, Exh. DL-25T at 4:1-15.

⁸⁵ *Id.* at 20:3-10.

⁸⁶ *Id.* at 3:22-23.

⁸⁷ *Id.* at 4:11-24.

⁸⁸ Lough, Exh. DL-06 and updated in DL-25T at 4:1-14.

arrive at amounts adjusted to reflect the cost-of-living in the Seattle area.⁸⁹ Based on these results, Lough determined a median net income level and recommends a DNI of \$543,055 in his direct testimony.

- 76 PSP provides testimony on the risks associated with performing pilotage service, including risk to pilot safety caused by unsafe vessels, fatigue risk, as well as the general risks associated with the profession. Captain Sandy Bendixen, for example, addresses pilot safety risks such as unsafe pilot ladders and the dangers of unsafe pilot transfer arrangements.⁹⁰ Bendixen observes that the death rate for state-licensed pilots in the United States would translate to 41.67 deaths per 100,000 pilots annually, which is nearly double the death rate for underground mining operators.⁹¹ Bendixen also brings up the issue of “fuel stoppers,” which have recently gained prevalence in an attempt to meet fuel emissions standards, but which significantly affect the maneuverability of the vessels.⁹²
- 77 Charles A. Czeisler, Ph.D., M.D., also provides testimony on behalf of PSP. Dr. Czeisler speaks to fatigue risk encountered by pilots and the fatigue risk management consulting work performed by Dr. Czeisler for PSP and other pilotage districts across the country.⁹³ Dr. Czeisler submits that PSP’s current level of callback assignments, about 15 percent on average, results in an increased risk of a fatigue-related adverse safety event.⁹⁴
- 78 PSP also provides testimony from current or former licensed pilots from the Columbia River Bar Pilots, Columbia River Pilots, and San Francisco Bar Pilots to support its proposed DNI. This testimony discusses, among other issues, pilot compensation and benefits, vessel traffic, pilot recruitment and retention, and unique challenges associated with each pilotage ground.⁹⁵
- 79 Staff proposes a revenue requirement that is premised on continuing the DNI authorized for rate year two in Final Order 09, in the amount of \$410,075, the funding of 56 pilots, and the addition of pilot medical expenses to TDNI.⁹⁶ Staff does not address the

⁸⁹ Lough, Exh. DL-01T at 17:4-25.

⁹⁰ Bendixen, Exh. SB-1T, see generally pages 10-29.

⁹¹ Bendixen, Exh. SB-9T at 4:14-19.

⁹² *Id.* at 5:17-6:6.

⁹³ Czeisler, Exh. CAC-01T.

⁹⁴ *Id.* at 84:1-6.

⁹⁵ See Jordan, Exh. DJ-01T; Nielson, Exh. JN-1T; McIntyre, Exh. ALM-01T.

⁹⁶ Staff Reply Brief ¶7 and ¶12 and Young, Exh. MY-9.

arguments made by PSP in support of its proposed change in DNI calculation methodology, including the issues of pilotage safety and vessel risk, fatigue risk, or the overall profitability of shippers.⁹⁷

80 PMSA witness Captain Moore argues that PSP seeks “an exceptionally large and unnecessary increase in pilot DNI that deviates from the Commission’s prior rate-setting methodology regarding DNI and number of pilots.”⁹⁸ Moore instead proposes a three-year rate plan with DNIs of \$346,391 in rate year one, \$357,475 in rate year two, and \$368,914 in rate year three.⁹⁹

81 Captain Moore argues that PSP’s compensation study is “incomplete, inaccurate, and even less compelling” than the study provided in its prior rate case.¹⁰⁰ Captain Moore argues that the study does not consider the comparability of day-to-day work performed by pilots, provide financial statements or audits, or consider which pilotage districts were excluded from analysis.¹⁰¹ Captain Moore also argues that PSP improperly comingles data from different years, comingles actual pilot DNI with authorized DNI, and that adjusting these values to 2023 levels using cost of living adjustment (COLA) increases does not reflect actual DNI distributions.¹⁰² Captain Moore raises concerns that PSP engaged in “cherry-picking,” such as using a multi-year average for the San Francisco Bar Pilots only,¹⁰³ and using 2019 DNI data for the Los Angeles Harbor Pilots, rather than 2020, which PSP also had available, and which had much lower net income levels.¹⁰⁴

82 Captain Moore also disputes PSP’s analyses of pension and medical insurance benefits. For example, Captain Moore claims the Columbia River Pilots and Columbia River Bar Pilots do not receive a pension accrual of 1.25%, and, in fact receive no pension at all.¹⁰⁵ These pilots receive additional funds above their target net income, with which they are

⁹⁷ See Young, Exh. MY-1T; MY-11T.

⁹⁸ Moore, Exh. MM-1T at 6:14-18.

⁹⁹ *Id.* at 17:5-9.

¹⁰⁰ *Id.* at 184:9-11.

¹⁰¹ *Id.* at 190:4-19.

¹⁰² *Id.* at 191:10-22.

¹⁰³ *Id.* at 192:3-7.

¹⁰⁴ *Id.* at 193:9-16. Per Moore, LA Harbor Pilots average net income in 2019 was \$434,712 and was \$308,168 in 2020. See also Lough, Exh. DL-19.

¹⁰⁵ Moore, Exh. MM-1T at 194:14-16.

allowed to make their own independent decisions on funding their own retirement plans.¹⁰⁶ Captain Moore raises a similar issue regarding the LA Harbor Pilots' pension and medical insurance coverage. Although PSP claims medical insurance is funded by the tariff and their pensions are "publicly funded," Captain Moore submits that these are funded directly from the pilots' gross income at rates of 4 percent (medical) and 7 percent (pension).¹⁰⁷ Recognizing these factors would further reduce the net income figures PSP reported.¹⁰⁸

83 Captain Moore argues further that PSP has not had any difficulties recruiting qualified pilot candidates, and in fact, 2021 represented the second largest applicant pool since 1996, despite relatively low DNI in 2020.¹⁰⁹ Captain Moore contends that Puget Sound continues to remain a very attractive pilotage ground for prospective trainees due to the large pool of local and experienced mariners, and that there has never been a pilot opening without a BPC-qualified candidate in training or waiting to train.¹¹⁰ According to Captain Moore, potential pilotage candidates, who earn a relatively modest stipend while in training, often sacrifice a stable and lucrative career for the opportunity to become a pilot.¹¹¹ Captain Moore also discusses the "buy-in period," which occurs over a period of six years upon licensure and can reduce a pilot's take-home pay by about 15 percent on average.¹¹²

84 Captain Moore also disputes PSP's suggestion that it lacks the ability to attract a highly diverse and well-qualified group of applicants. Captain Moore argues that PSP supplies no demographic information to support these claims,¹¹³ and that PSP is unable to define what constitutes an applicant who is the "best of the best."¹¹⁴ If an applicant meets the

¹⁰⁶ *Id.* at 194:16-23.

¹⁰⁷ *Id.* at 194:24-195:1.

¹⁰⁸ *Id.* at 195:1-5.

¹⁰⁹ *Id.* at 86:6-21.

¹¹⁰ *Id.* at 86:25-87:7.

¹¹¹ *Id.* at 92:25-93:5.

¹¹² *Id.* at 96:19-97:15.

¹¹³ *Id.* at 103:5-23.

¹¹⁴ *Id.* at 105:4-19.

BPC's requirements, PMSA argues, then they are qualified to become a pilot, regardless of whether they were considered "the best of the best" on paper in the applicant pool.¹¹⁵

85 Captain Moore does not agree, either, that there have been substantial increases in risks to pilots or vessels when compared to PSP's last rate case.¹¹⁶ The Commission already deliberated on the question of relative risk, Captain Moore submits, when it decided to give weight to vessel tonnage over bridge hours in rate design as a means of reflecting relative risk between larger and smaller vessels.¹¹⁷ The Commission came to the conclusion in Order 09 that "risk should not be a factor in raising rates," and the Commission found "no evidence that absolute risk is increasing for pilots in the Puget Sound, which would justify greater compensation."¹¹⁸

86 Captain Moore disagrees with the claims of PSP's witnesses who address pilot safety, fatigue, and vessel risk, and he further submits that "most of this testimony has little to nothing to do with rates of pilotage."¹¹⁹ Captain Moore argues that PSP's testimony suggests that there was a reduction in absolute risk since PSP's last rate case due to the consulting work performed by PSP witness Dr. Czeisler in 2021 to help improve PSP's efficiency "without sacrificing safety or prudent fatigue mitigation efforts."¹²⁰ Captain Moore argues that this testimony is of little relevance in this rate case because the Commission ruled that "these issues fall squarely within the BPC's purview."¹²¹

87 Captain Moore argues that PSP witnesses Jordan, Captain Klapperich, and Captain Bendixen speak to the inherent risks of the pilotage profession but do not address changes in relative or absolute risk in the Puget Sound, much less changes occurring since the last rate case.¹²² Captain Moore argues that PSP's witness Captain Stoller's claims are unsupported and that the report sponsored by Stoller demonstrates "the exact opposite

¹¹⁵ *Id.* at 107:3-16.

¹¹⁶ *Id.* at 118:9-10.

¹¹⁷ *Id.* at 118:24-119:7.

¹¹⁸ *Id.* at 119:13-18. *See also* TP-190976 Order 09 ¶ 360.

¹¹⁹ *Id.* at 121:4-13.

¹²⁰ *Id.* at 122:18-23.

¹²¹ *Id.* at 122:24-123:2. *See also* Docket TP-190976, Order 09 ¶ 86, 451.

¹²² *Id.* at 123:6-22 and 126:5-7

conclusion,” measuring risk that pilotage errors impose on vessels, not the risk unsafe vessels pose to pilots.¹²³

- 88 Captain Moore submits that incident data from the BPC shows reductions in pilotage incidents over time.¹²⁴ On the issue of relative risks posed by different size vessels, Captain Moore notes that within the last three years, no large vessel has been involved in a major pilotage incident and that two of the three incidents from 2019-2021 occurred with some of the smallest vessels by tonnage.¹²⁵
- 89 While PSP argues that foreign-flagged vessels pose significant risks to Puget Sound, Captain Moore argues that these statements are “dated, factually incorrect, and [do] not represent the reality of today’s shipping industry.”¹²⁶ PSP’s failure to consider the enforcement of safety and environmental regulations results in an incomplete picture of how vessels are regulated and how laws and regulations are enforced.¹²⁷ Captain Moore submits that the 2021 Port State Control Annual Report shows downward trends in safety or environmental detentions and, PMSA states, the “impeccable vessel safety record” of the Puget Sound.¹²⁸
- 90 Captain Moore recommends that the Commission continue its five-year historical average for calculating pilot DNI, adjusting for inflation and making one slight change reflecting the addition of a callback “expense” per pilot.¹²⁹ Captain Moore references the Kiplinger’s Inflation Outlook, which predicts an annual inflation rate for 2023 of 3.2 percent, which they would reduce by 50 percent.¹³⁰
- 91 Kathy Metcalf, President of the Chamber of Shipping of America, also provides response testimony on behalf of PMSA. Metcalf testifies that Costanzo describes the maritime industry as it was over two decades ago, but that the flag state control program and port state control program help ensure shipping companies meet treaty requirements.¹³¹

¹²³ *Id.* at 127:21-128:2.

¹²⁴ *Id.* at 132:13-17.

¹²⁵ *Id.*

¹²⁶ *Id.* at 4:19-26.

¹²⁷ *Id.* at 8:7-12.

¹²⁸ *Id.* at 180:3-26.

¹²⁹ *Id.* at 17:22-18:6. See also Exh. MM-3 and Exh. MM-4.

¹³⁰ *Id.* at 18:10-11

¹³¹ Metcalf, Exh. KJM-1T at 3:15-4:5.

Metcalf argues that “a very significant percentage of the international shipping industry operates to the highest standards, often exceeding global and national standards, as evidenced by flag state and port state control statistics.”¹³² She argues further that the “vast majority” of vessels do not seek to evade their legal responsibilities¹³³ and that Costanzo overlooks the role of the U.S. Coast Guard in enforcing safety and environmental regulations.¹³⁴

92 Metcalf also does not agree with Captain Stoller’s claim that risks to pilots are growing. Metcalf explains that the risks are not growing but are “changing due in large part to the increased size of vessels.”¹³⁵ However, technological advancements, increased use of tug escorts, and other factors help to mitigate the risks posed by increasingly large vessels.¹³⁶ Metcalf argues that the report cited by Captain Stoller shows that an “infinitesimally small percentage” of vessel movements result in collisions or other incidents.¹³⁷ Yet Metcalf acknowledges that the risks of transits in pilotage waters will never be reduced to zero.¹³⁸

93 PMSA also provides testimony from Kathleen Nalty, an attorney and a consultant on DEI. Nalty testifies that increasing DNI will not directly lead to increasing pilot diversity, as “[s]imply focusing on recruiting people from underrepresented groups does not work” and that diverse candidates are looking “to more personal avenues” to determine if an employer is inclusive or not.¹³⁹ Nalty submits that “[m]erely increasing compensation without addressing other factors that jobseekers and, especially, diverse jobseekers are looking for, would seem to be only minimally impactful as a strategy.”¹⁴⁰ Nalty

¹³² *Id.* at 6:6-9.

¹³³ *Id.* at 7:16-17.

¹³⁴ *Id.* at 8:7-12. *See also* Metcalf, Exh. KJM-4 (2021 USCG Port State Control in the United States Report).

¹³⁵ *Id.* at 18:14-17.

¹³⁶ *Id.* at 18:17-24.

¹³⁷ *Id.* at 20:10-15 (discussing Stoller, Exh. MSS-3 (International Group of P&I Clubs Report on Claims Involving Vessels Under Pilotage 1999-2019)).

¹³⁸ *Id.* at 23:8-10.

¹³⁹ Nalty, Exh. KN-1T at 4:22-5:15.

¹⁴⁰ *Id.* at 5:17-6:2.

continues, “I have never seen compensation listed as a ‘go to’ strategy for increasing diversity, especially as a stand-alone strategy.”¹⁴¹

94 Nalty provides examples of strategies that organizations may use to advance DEI, observing again that compensation is “not among the key strategies that have been shown in research studies to lead to greater diversity in an organization.”¹⁴²

95 On rebuttal, PSP witness Lough provided updates to the compensation study, adding a 13th pilotage ground and updating net income levels for two of the existing districts in its original study.¹⁴³ This results in a proposed increase from PSP’s initially proposed per-pilot DNI of \$543,055, to \$574,087.¹⁴⁴

96 Captain Carlson submits workload data reflecting some of the pilotage districts represented in its comparable ports analysis, using data from 2019 through 2022, to address claims that pilots are making themselves less available for work.¹⁴⁵ Captain Carlson argues that PSP’s total hours on task was the second highest of the districts presented over this period.¹⁴⁶ Total hours on task represents the total number of assignments multiplied by the average assignment time, divided by the number of pilots.¹⁴⁷

97 Captain Bendixen also disputes PMSA’s portrayal of the candidate pool. Captain Bendixen observes that the 2021 candidate pool produced only 11 qualified candidates, not 37 as claimed by PMSA, which represents a nearly 25 percent decrease when compared to the 2016 class.¹⁴⁸

98 Captain Bendixen disputes PMSA’s contention that it is “[not] necessary to increase compensation to effectuate changes or that an increase in compensation will increase or advance DEI.”¹⁴⁹ Governor Inslee’s Executive Order 22-04, which coincided with the

¹⁴¹ *Id.* at 6:2-3.

¹⁴² *Id.* at 6:8-11:4.

¹⁴³ Lough, DL-26T at 4:19-5:2.

¹⁴⁴ Lough, DL-25T at 6:13-18.

¹⁴⁵ Carlson, Exh. IC-8T at 14:6-15:20; Exh. IC-14.

¹⁴⁶ *Id.* at 14:6-15:20.

¹⁴⁷ Carlson, Exh. IC-14.

¹⁴⁸ Bendixen, Exh. SB-9T at 3:8-14.

¹⁴⁹ *Id.* at 1:20-2:5.

creation of the Washington State Pro-Equity Anti-Racism (PEAR) Plan and Playbook, lists “economic justice” as the first determinant of equity.¹⁵⁰ Captain Bendixen argues that “economic justice, by definition requires competitive compensation,” and that its inclusion in the PEAR initiative directly undercuts PMSA’s claim.¹⁵¹ A work culture that fosters a supportive and family-friendly environment is an important factor in recruiting pilots of historically underrepresented backgrounds.¹⁵² Captain Bendixen observes that PSP was the first pilot group in the country to adopt a progressive maternity leave policy.¹⁵³

99 Chief Mate Alysia Johnson likewise testifies that if PSP is to achieve its goal of diversifying its pilotage group, it must offer pay and benefits that are competitive nationally.¹⁵⁴

100 In cross-answering testimony, PMSA states that it considers Staff’s proposed continuation of existing per pilot DNI without adjustment “a literal reflection of the fact that PSP has failed to introduce any real or compelling evidence to justify a change in pilot DNI.”¹⁵⁵ PMSA notes that even though it deviates from the prior methodology, it is consistent with the prior case because it represents a continuation of the same per pilot DNI.¹⁵⁶ Regardless, PMSA recommends the Commission adopt PMSA’s proposed methodology and DNI.

101 In its Brief, PSP argues that Staff and PMSA have taken positions on the issue of pilot DNI that are “unreasonable on their face and should be given no weight.”¹⁵⁷ PSP notes that PMSA advocates for a decrease to the year two DNI approved in Final Order 09 and that Staff simply defaulted to the current, authorized DNI.¹⁵⁸

102 PSP argues that the Commission should consider finding as a matter of law that any major state-licensed pilot group with 15 or more pilots is presumed comparable in terms

¹⁵⁰ *Id.* at 2:9-18.

¹⁵¹ *Id.* at 2:14-18.

¹⁵² Bendixen, Exh. SB-1T at 5:4-8; 6:4-5.

¹⁵³ *Id.* at 7:16-20.

¹⁵⁴ Johnson, Exh. AJ-03T at 3:11-18.

¹⁵⁵ Moore, Exh. MM-63T at 8:3-7.

¹⁵⁶ *Id.* at 7:22-26.

¹⁵⁷ PSP Brief ¶ 51.

¹⁵⁸ *Id.*

of workload.¹⁵⁹ PSP argues further that the Commission should develop an income parity principle to ensure that there is compensation equity between the Puget Sound and Grays Harbor pilotage districts.¹⁶⁰

- 103 In terms of comparability, PSP submits that state-licensed pilots are highly comparable in terms of their background,¹⁶¹ and it explains that the Puget Sound pilotage ground is larger and involves a greater diversity of vessel traffic compared to other west coast pilotage grounds.¹⁶² PSP notes that its workload is also among the highest in total work hours among the 15 pilot groups surveyed.¹⁶³
- 104 PSP submits that pilots “fulfill their mission to protect life, property and the Puget Sound environment at enormous personal risk,” citing actual physical dangers of the pilot ladder transfer and the potential of financial ruin for pilots found liable for negligence.¹⁶⁴
- 105 PSP states that achieving greater diversity in the pilot corps is a “moral imperative” and notes that the association has engaged in robust initiatives to prioritize DEI in the maritime community.¹⁶⁵ PSP notes that its witnesses Captain Bendixen, Captain Dempsey, and Captain McIntyre did not agree with PMSA witness Nalty’s claims that increasing compensation is unnecessary to achieving DEI goals¹⁶⁶
- 106 In its Brief, Staff argues that the authorized DNI set by Final Order 09 remains sufficient to attract qualified candidates and that it should remain in place.¹⁶⁷ Once these candidates complete the BPC’s training program, they will provide the “best available protection” to the Puget Sound.¹⁶⁸

¹⁵⁹ *Id.* ¶ 52.

¹⁶⁰ *Id.* ¶ 53. *See also id.* ¶¶ 70-71.

¹⁶¹ *Id.* ¶ 56.

¹⁶² *Id.* ¶ 57.

¹⁶³ *Id.* ¶ 62.

¹⁶⁴ *Id.* ¶¶ 65-66.

¹⁶⁵ *Id.* ¶ 75.

¹⁶⁶ *Id.* ¶¶ 77-78.

¹⁶⁷ *See* Staff Brief ¶¶ 27-29.

¹⁶⁸ *Id.* ¶ 28.

- 107 PMSA likewise argues that PSP’s current rates are sufficient, and that the association was able to attract qualified candidates even when its actual DNI fell to \$204,50 in 2020.¹⁶⁹
- 108 With regard to PSP’s compensation study, PMSA argues that Lough admitted on cross-examination that BLS statistics do not support a 10 percent pay premium for the Seattle area.¹⁷⁰ PMSA also argues that Lough admitted that all data for his compensation study was provided by PSP.¹⁷¹
- 109 PMSA argues that PSP failed to provide financial statements for each of the pilot districts discussed in its compensation study, as required by Final Order 09.¹⁷² PMSA argues, however, that because PSP is successfully attracting talent under the current tariff it is not necessary for the Commission to consider the comparability of other districts.¹⁷³
- 110 PMSA submits that Final Order 09’s methodology results in “modest increases” to DNI and that the Commission should not simply adopt the year two DNI from Final Order 09, as advocated by Staff.¹⁷⁴
- 111 In its Reply Brief, PSP argues that if the Commission considers the appropriate standard of review and seeks to fund a “best-in-class” pilotage system, then PSP should necessarily earn a nationally competitive DNI.¹⁷⁵ PSP argues that Staff’s position deserves no consideration because Staff witness Young admits that he only “scanned” the data supporting the comparability study.¹⁷⁶
- 112 PSP argues that PMSA ignores the fact that Lough included detailed financial information for 10 of the 13 pilot groups surveyed in his compensation study.¹⁷⁷ PSP contends that PMSA also cherry-picked the number of sign-ups for the pilotage examination in 2021 while ignoring other data showing the harm to the Puget Sound pilotage’s districts ability to attract and retain talent, citing the declining number of

¹⁶⁹ PMSA Brief ¶¶ 16-18.

¹⁷⁰ *Id.* ¶ 20 (citing Lough, TR. at 505:14-19).

¹⁷¹ *Id.* (citing Lough, TR. at 476:9-12).

¹⁷² *Id.* ¶ 21.

¹⁷³ *Id.* ¶ 22.

¹⁷⁴ *Id.* ¶¶ 23-25.

¹⁷⁵ PSP Reply Brief ¶ 11.

¹⁷⁶ *Id.* ¶ 13 (citing Young, TR at 829:22-830:5).

¹⁷⁷ *Id.* ¶ 12.

candidates who passed the written exam and then the simulator exam.¹⁷⁸ According to PSP, PMSA also overlooks Captain Carlson’s testimony that morale is “in the tank” and that five member pilots are considering transferring to other districts.¹⁷⁹

113 In its Reply Brief, Staff maintains its objections to PSP’s comparability study.¹⁸⁰ Staff also argues that PSP has failed to establish that the Grays Harbor pilots are similarly situated to PSP member pilots.¹⁸¹

114 PMSA maintains that PSP has not established that it is unable to attract qualified candidates.¹⁸² PMSA argues, for instance, that Lough admitted on cross-examination that he did not analyze a national candidate pool.¹⁸³ PMSA also argues that 37 out of the 40 applications received by the BPC were qualified to sit for the 2021 examination, belying any claim that PSP is unable to attract qualified applicants.¹⁸⁴

115 *Commission Determination.* Pilot compensation in the form of DNI comprises the largest element in PSP’s revenue requirement. The parties disagree strongly about how DNI should be determined and what PSP’s authorized DNI should be. After considering all the evidence, we conclude that PSP’s authorized DNI should be adjusted upwards to \$475,733.

a. PSP’s compensation study

116 We turn first to PSP’s updated DNI on rebuttal based on Lough’s compensation study.¹⁸⁵ There are several concerns with this study that render it less persuasive for our decision.

117 In Final Order 09, the Commission observed that unlike rate-setting authorities in Oregon, Hawaii, and other jurisdictions, the Commission is not expressly required to consider other pilotage districts as comparators for the purpose of setting an appropriate

¹⁷⁸ *Id.* ¶¶ 14-16.

¹⁷⁹ *Id.* ¶ 17.

¹⁸⁰ Staff Reply Brief ¶¶ 8-9.

¹⁸¹ *Id.* ¶ 10.

¹⁸² PMSA Reply Brief ¶¶ 26-28.

¹⁸³ *Id.* ¶ 29 (citing Lough, TR. at 505:12-508:10).

¹⁸⁴ *Id.* (citing Moore, Exh. MM-1T at 90:21).

¹⁸⁵ Lough, DL-25T at 6:13-18.

DNI.¹⁸⁶ The Commission therefore considered PSP’s testimony regarding comparable pilotage districts and gave it weight “based on its reliability and relevance to the particular facts” to the case at hand.¹⁸⁷ We apply the same standard here.

118 When we consider Lough’s compensation study, we share many of the concerns identified by PMSA. As Captain Moore explains, Lough improperly comingles data from different years and comingles actual pilot DNI with authorized or target DNI.¹⁸⁸ Adjusting DNI values to 2023 using COLA increases does not reflect actual DNI distributions.¹⁸⁹ Lough did not treat the comparable districts in a consistent manner, either. Lough used a multi-year average for the San Francisco Bar Pilots, but not other districts.¹⁹⁰ Lough also used 2019 DNI data for the Los Angeles Harbor Pilots, rather than 2020, which was available, and indicated much lower net income levels.¹⁹¹

119 Captain Moore also identifies inaccuracies in Lough’s analysis of pension and medical insurance benefits. Despite Lough’s notations in the compensation study, the Columbia River Pilots and Columbia River Bar Pilots do not receive a pension accrual of 1.25%, and, in fact receive no pension at all.¹⁹² Captain Moore testifies that these pilots receive additional funds above their target net income, with which they are allowed to make their own independent decisions on funding their own retirement plans.¹⁹³ Captain Moore raises a similar issue regarding the LA Harbor Pilots’ pension and medical insurance coverage. Although PSP claims medical insurance is funded by the tariff and its pensions are “publicly funded,” Captain Moore submits that these are funded directly from the pilots’ gross income at rates of 4 percent (medical) and 7 percent (pension).¹⁹⁴ Recognizing these factors would further reduce the net income figures PSP reported.¹⁹⁵ It is notable that Lough does not respond to these various challenges on rebuttal, even

¹⁸⁶ Final Order 09 ¶ 141

¹⁸⁷ *Id.*

¹⁸⁸ Moore, Exh. MM-IT at 191:10-22.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 192:3-7.

¹⁹¹ *Id.* at 193:9-16. Per Moore, LA Harbor Pilots average net income in 2019 was \$434,712 and was \$308,168 in 2020. See also Lough, Exh. DL-19.

¹⁹² *Id.* at 194:14-16.

¹⁹³ *Id.* at 194:16-23.

¹⁹⁴ *Id.* at 194:24-195:1.

¹⁹⁵ *Id.* at 195:1-5.

though he provides an updated compensation study with many of the same claims challenged by Captain Moore.¹⁹⁶

120 It may be difficult in many instances for PSP to obtain compensation data from other pilotage districts. But a compensation study cannot be considered reliable by this Commission when it is based on a commingling of actual and authorized DNIs, inconsistent treatment of the data from different pilotage districts, inaccurate claims regarding pension and medical benefits, and lacks detailed explanation as to how each of the identified pilot districts operations are comparable to PSP operations to support a higher DNI than would otherwise be indicated.¹⁹⁷

b. Whether PSP is able to attract and retain qualified candidates

121 Next, we turn to PSP’s arguments that it is struggling to either retain current pilots or attract qualified candidates. After considering all of the evidence, we agree with Captain Moore’s observation that each recent pilotage examination “has generated a number of qualified candidates that passed both the exam and simulator in the range between 11-16, seemingly independent of the number of applications received.”¹⁹⁸ The 2021 exam had a higher initial number of applicants, but this was similar to the 2008 examination, “which had the highest number of applications ever but still generated a standard number of pilot candidates after the exam.”¹⁹⁹ This variation in the total number of applicants over the last 15 years tends to undermine Captain Bendixen’s argument that the 2021 examination failed to attract a sufficient number of qualified candidates as compared to the 2016 examination.²⁰⁰ The record shows a variation in the number of applicants taking the pilotage examination over the last 15 years and, relatedly, a variation in the percentage of candidates passing both the written and simulator examination.

122 We have also considered Captain Carlson’s testimony that PSP “will face a similar situation to that on the Great Lakes,” citing the case of *American Great Lakes Ports Ass’n v. Schultz*.²⁰¹ In Final Order 09, the Commission noted that in *Schulz*, there was “ample

¹⁹⁶ See Lough, Exh. DL-26T at 3:11-5:2.

¹⁹⁷ See Staff Reply Brief ¶ 8.

¹⁹⁸ Moore, Exh. MM-1T at 89:13-15.

¹⁹⁹ *Id.* at 9:15-17.

²⁰⁰ See Bendixen, Exh. SB-9T at 3:8-21.

²⁰¹ Carlson, Exh. IC-08T at 24:1-25:3 (citing *Am. Great Lakes Ports Ass’n v. Zukunft*, 296 F. Supp. 3d 27, 39-40 (D.D.C. 2017), *aff’d sub nom. Am. Great Lakes Ports Ass’n v. Schultz*, 962 F.3d 510 (D.C. Cir. 2020)).

evidence” that low compensation caused a shortage of pilots on the Great Lakes.²⁰² Pilots and trainee pilots resigned because of the low compensation and long hours.²⁰³ Another witness described 10 pilots retiring early for the same reasons.²⁰⁴ We are not presented with a comparable situation here. Captain Moore testifies that “[t]here has never been a pilot opening in the Puget Sound without a BPC-qualified candidate in training or waiting to train.”²⁰⁵ The evidence shows that PSP’s recent compensation levels are attracting qualified candidates. There is no evidence that PSP member pilots are retiring early or that candidates in more highly compensated districts pass a comparable state licensing examination at a higher rate. This case is not comparable to *Schulz*.

c. Staff’s and PMSA’s proposals

123 Finding that PSP’s compensation proposal lacks reliability, we turn to the competing proposals from Staff and PMSA.

124 We have considered PMSA’s proposed three-year rate plan for DNI.²⁰⁶ While PSP would follow the same methodology accepted in Final Order 09,²⁰⁷ this would lead to an unreasonable and unjust end-result.

125 Indeed, PMSA’s proposal would have the Commission decrease authorized DNI based on temporary downturns in vessel traffic tied to the COVID-19 pandemic. Captain Moore averages recent actual DNI distributions, after adjusting for inflation, which include an adjusted 2020 DNI of \$214,190 and an adjusted 2021 DNI of 296,693.²⁰⁸ These figures reflect a significant downturn in vessel traffic that occurred during the COVID-19 pandemic, and they fall well-below the actual DNIs for 2018 and 2019.²⁰⁹ Much as the Commission determined in Final Order 09, it would not be reasonable or appropriate to adjust PSP’s rates downwards in light of the pandemic, particularly since the underlining

²⁰² *Schultz*, 962 F.3d at 516.

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Moore, Exh. MM-1T at 92:14-16.

²⁰⁶ *Id.* at 17:5-9.

²⁰⁷ See Final Order 09 ¶ 166 (adopting Staff’s proposal to determine DNI based on an averaging of historical data).

²⁰⁸ Moore, Exh. MM-3.

²⁰⁹ *Id.* See also Burton, Exh. WTB-4Tr at 8:3-8 (discussing downturns in vessel traffic during the pandemic).

COVID-19 vessel traffic and associated revenues for 2020 and 2021 is not predictive of the rate year.²¹⁰ While PMSA correctly notes that PSP’s total assignment levels in 2021 are similar to the total assignments PSP predicts in the rate year,²¹¹ this fails to account for the low number of cruise ship assignments that PSP experienced during 2021 as a result of the COVID-19 pandemic, and the significant amount of revenue these assignments generate. As indicated by PSP’s cruise ship revenue adjustment, which no party has challenged, this had an impact of approximately \$3.5 million when compared to a more typical cruise season.²¹² All considered, it is more important that the Commission arrive at a fair, just, reasonable, and sufficient end-result rather than continuing a specific” methodology for calculating DNI unchanged.

126 We also comment on PMSA’s argument that it is proposing “modest increases” to DNI.²¹³ This argument conflates the distinction between *actual* and *authorized* DNIs. PMSA is recommending a decrease in authorized DNI compared to Final Order 09, and it is simply incorrect to claim otherwise.

127 Staff witness Young proposes a revenue requirement that is premised on continuing the rate year two DNI, as determined by Final Order 09.²¹⁴ Staff did not provide any testimony responding to PSP’s comparability study but maintains that this DNI remains sufficient to attract and retain qualified candidates.²¹⁵

128 We have considered Staff’s position and whether PSP has, in fact, met its burden to establish the need for any rate increase. However, Staff’s position is generally less persuasive given the lack of clear analysis supporting their position in responsive testimony and Staff’s apparently cursory review of PSP’s compensation study.²¹⁶

129 Rather than freezing DNI, we again find it fair, just, reasonable, and sufficient to apply a modified version of the methodology adopted in Final Order 09. Final Order 09 approved a target DNI for rate year one based on a five-year average of recent actual DNI

²¹⁰ Final Order 09 ¶¶ 105, 367.

²¹¹ PMSA Brief ¶53.

²¹² Burton, Exh. WTB-04T at 8:3-12; *See* Exh. WTB-05 (Adjustments R-12 and P-05).

²¹³ PMSA Brief ¶¶ 23-25.

²¹⁴ Young, Exh. MY-9. *See also* Moore, Exh. MM-63T at 7:8-16.

²¹⁵ *See* Staff Brief ¶¶ 27-29.

²¹⁶ *See* Young, TR at 829:22-830:5.

distributions, adjusted for inflation.²¹⁷ To prospectively account for the effects of inflation anticipated during rate year one, the Commission then approved a rate year two target DNI based on a one-time increase of 2.3 percent, based on the Consumer Price Index for All Urban Consumers (CPI-U).²¹⁸

130 In this case, we find it reasonable and appropriate to modify the five-year average to a three-year average, excluding 2020 and 2021 DNI distributions from the calculation. Due to the COVID-19 pandemic we observe that PSP member pilots received far lower distributions in these years primarily because of downturns in vessel traffic. During 2020 and 2021, actual DNI distributions were \$204,580 and \$295,616, respectively.²¹⁹ These were well below the DNI distributions in recent years as well as the target DNIs authorized by the Commission for these two years. Because the impacts of the COVID-19 pandemic on vessel traffic were reasonably beyond the association's control, we begin our analysis with PSP's actual DNI distributions for 2017 through 2019.²²⁰ Updating these figures to reflect the June 2023 CPI-U for Seattle-Tacoma-Bellevue area, which we believe to be a more accurate reflection of local inflationary pressure than a nation-wide metric, results in a three-year average of \$475,733.²²¹ We therefore authorize a target DNI of \$475,733, which represents a fair, just, reasonable, and sufficient target DNI for PSP member pilots at this time. It appropriately continues the methodology from Final Order 09 with limited modifications; increases pilot compensation to account for significant, recent inflation; and avoids penalizing pilots for temporary downturns in shipping traffic that resulted from the pandemic and were beyond PSP's control.

d. Other arguments raised by PSP

131 We have also considered several other arguments PSP raised regarding DNI. First, we consider Captain Carlson's testimony that PSP's total hours on task was the second highest of the districts presented over this period.²²² Captain Carlson also notes that 16 percent of PSP's assignments were performed by off-duty pilots on "callback"

²¹⁷ Final Order 09 ¶ 166.

²¹⁸ *Id.* ¶ 167.

²¹⁹ Norris, Exh. JJN-01T at 5:1-3.

²²⁰ 2017 (\$401,628), 2018 (\$357,186), and 2019 (\$369,640), respectively. *See* Moore, Exh. MM-3.

²²¹ For 2017 through 2019, \$522,523, \$450,268, and \$454,409, respectively.

²²² Carlson, Exh. IC-08T at 14:12-13.

assignments, a higher percentage than other pilot associations.²²³ We give this testimony weight and provide consideration for PSP’s workload by funding an additional number of pilots, placing a “premium” into rates reflecting this additional workload.²²⁴ While the Commission does not determine the number of authorized pilots or administer the pilot examination, it is fair, just, reasonable, and sufficient for rates to reflect the relatively high workload shouldered by PSP member pilots.

132 PSP also argues that the Commission should develop an income parity principle to ensure that there is compensation equity between the Puget Sound and Grays Harbor pilotage districts.²²⁵ We give this argument little weight. The legislature has delegated the rate-setting function to the Commission in broad terms by using the fair, just, reasonable, and sufficient standard. The determination of pilot DNI is ultimately a question of fact under this traditional rate-setting standard and is a specific determination for each pilotage district based on the specific facts in each case brought before the Commission.²²⁶

133 The circumstances also weigh against adopting any income parity principle as a matter of law. Grays Harbor pilots’ current income levels were determined through a regular open meeting where the Commission allowed the proposed tariff to take effect.²²⁷ PMSA did not directly oppose this tariff and noted that the Port of Grays Harbor was required to overstaff pilots due to the lack of vessel traffic.²²⁸ It would be a departure from Commission practice, and an abdication of our role as the rate-setting authority, to base the decision in this fully adjudicated case on rates proposed and accepted without opposition through an open meeting.

134 To the extent we consider Grays Harbor pilots’ income in this decision, we consider it as one of several items of evidence supporting our decision. Lough only relied on Grays Harbor pilots’ 2022 income when determining his median recommended salary.²²⁹

²²³ *Id.* at 4:10-13.

²²⁴ *See infra*, Section C.2.

²²⁵ PSP Brief. ¶ 53. *See also id.* ¶¶ 70-71.

²²⁶ Further it is important to note that Grays Harbor’s rates were the result of an informal settlement heard at a regularly scheduled Open Meeting and not adjudicated. PSP may reconsider its general rate case filing strategy and work with the parties towards a proposed settlement going forward.

²²⁷ *See Moore*, Exh. 85X.

²²⁸ *See id.*

²²⁹ *See Lough*, Exh. DL-1T at 18:10-19:19:24. *See also Lough*, Exh. DL-6.

Lough's median salary did not reflect Grays Harbor pilots' income from earlier years, which showed that these pilots were paid relatively less.²³⁰ This represents one of several instances where Lough selects more favorable evidence as a basis for his recommendation while excluding less favorable evidence.

135 Even still, we observe that Lough's projections for 2023 pilot incomes for other west coast pilotage associations are generally consistent with our findings in this Order. Lough projects a 2023 income of \$497,759 for Grays Harbor pilots, \$456,719 for Los Angeles Harbor pilots, an averaged income of \$443,923 for San Francisco Bar pilots, \$503,527 for Columbia River pilots, and \$503,527 for Columbia River Bar pilots.²³¹ The average projected 2023 income for these five west coast pilotage districts is \$481,091. We have significant concerns with the reliability of Lough's compensation study and its accuracy. There are also significant, unresolved questions as to which districts are comparable in any meaningful sense. But to the limited extent we consider the pilot incomes from these other west coast pilotage grounds, they tend to underscore the reasonableness of our decision in this Order, rather than support the far higher figure of \$574,087 proposed by Lough.

136 PSP also argues that its DNI should be increased to support the diversification of the pilot corps.²³² We give these arguments and testimony little weight. PSP does not provide any data regarding candidate demographics over time, which might demonstrate change or the relationship of DNI to applications from diverse candidates.²³³ Furthermore, PMSA witness Nalty credibly testifies, "I have never seen compensation listed as a 'go to' strategy for increasing diversity, especially as a stand-alone strategy."²³⁴ Compensation is "not among the key strategies that have been shown in research studies to lead to greater diversity in an organization."²³⁵ In particular, Nalty was not aware of research supporting substantial increases in compensation for a majority-dominated institution in an effort to support DEI initiatives.²³⁶ Nalty's expertise on this issue outweighs the contrary opinions provided by Captain Bendixen and other PSP witnesses. Further, the Commission must

²³⁰ See Lough, DL-23.

²³¹ Lough, Exh. DL-26T at 4:1-14.

²³² E.g., Bendixen, Exh. SB-9T at 1:20-2:5.

²³³ Moore, Exh. MM-1T at 102:7-10.

²³⁴ *Id.* at 6:2-3.

²³⁵ *Id.* at 6:8-11:4.

²³⁶ Nalty, TR 750:16-20, 760:10-22.

also consider the actual outcome of increasing DNI for diversity and who benefits from PSP's recommendation. Simply put, the evidence does not demonstrate that increasing compensation for a majority-dominated institution is an appropriate or reasonable means of furthering DEI initiatives.

- 137 We recognize the work PSP has done instituting the maternity leave policy, mentoring, and reaching out to diverse candidates, and for spreading an awareness of maritime careers among underrepresented communities, as discussed by various organizations at the public comment hearing.²³⁷ These are all valuable steps towards diversifying the profession. But the evidence does not demonstrate that DEI initiatives should, in and of themselves, serve as a reason to increase DNI.
- 138 PSP also argues that it requires nationally competitive compensation to attract the “best of the best.”²³⁸ This argument is also unpersuasive and deserves little weight. We agree with Captain Moore’s observation that “[e]ven if this applicant pool exists theoretically, no one can tell when the BPC has actually received an application from a potential trainee who is among the ‘best’ or not among the ‘best.’”²³⁹ PSP has not provided any data to support these assertions.²⁴⁰ We have also observed in this Section that a varying number of candidates apply for the BPC examination while a relatively consistent number of candidates pass both the written exam and simulator exam. We are therefore not presented with any evidence indicating that DNI should be further increased, beyond what we have already approved in this Order, to attract qualified candidates.
- 139 We have also considered PSP’s arguments that the shipping industry is imposing pervasive risk to the pilots due to tactics such as the use of “flags of convenience, single vessel shell entities, and last voyage flags for the specific purpose of evading compliance with regulatory standards and externalizing tort liability.”²⁴¹ PSP witness Stoller argues that these practices justify funding a pilotage system that meets the “best achievable

²³⁷ *E.g.*, Bendixen, SB-1T at 6:14-16.

²³⁸ Carlson, Exh. IC-1T at 8:15-19.

²³⁹ Moore, Exh. MM-1T at 105:4-6.

²⁴⁰ *See id.* at 105:10-11.

²⁴¹ Costanzo, Exh. CPC-21T at 6:24-7:2. *See also* Stoller, Exh. MSS-1T at 5:23 (“I would describe the level of risk as persistent and growing.”).

protection” standard and seeks to mitigate risk “to the maximum extent possible.”²⁴² We decline to further increase tariff rates on the basis of this testimony.

140 As we have observed,²⁴³ it is ultimately the BPC’s responsibility as the safety and licensing authority to determine the appropriate manner of addressing shipping industry practices and the management of risk. It is our role as the rate-setting authority to allow for the recovery of prudently incurred costs in tariff rates and to determine a level of fair compensation to member pilots. PSP’s challenges to shipping industry practices, however, do not appear to be tied to any specific expenses, adjustments, or other costs that would be relevant for our consideration as the economic regulator. As PMSA witness Metcalf explains, safety and environmental regulations enforced through port state control programs and flag state control programs are “distinct and unrelated” from tariffs for pilotage services.²⁴⁴ Similarly, safety and environmental regulations are distinct from and unrelated to the individual compensation that pilots receive.²⁴⁵

141 PSP also overlooks the fact that risk is already factored into Commission decisions. First, pilots receive a substantially higher level of compensation than other mariners,²⁴⁶ reflecting the great demands and responsibilities of their profession. By basing DNI on recent distributions under the BPC-authorized tariff, we have provided a relatively high level of compensation that reflects the previous rate-setting authority’s judgment as to the appropriate levels of compensation for this association. Second, the current tariff structure recognizes the relatively greater risks posed by larger vessels by placing greater weight on the tonnage charge.²⁴⁷

142 Finally, we are not persuaded that absolute risks are increasing for PSP member pilots. Metcalf testifies that Costanzo describes the maritime industry as it was over two decades ago, but that the flag state control program and port state control program help ensure shipping companies meet treaty requirements.²⁴⁸ Metcalf explains that the risk are not growing but are “changing due in large part to the increased size of vessels.”²⁴⁹ However,

²⁴² Stoller, Exh. MSS-1T at 51:2-11.

²⁴³ *See supra*, Section B.3.

²⁴⁴ Metcalf, Exh. KJM-1T at 17:6-10.

²⁴⁵ *Id.* at 17:12-16.

²⁴⁶ *E.g.*, Moore, Exh. MM-1T at 95:4-26.

²⁴⁷ Final Order 09 ¶¶ 360-61.

²⁴⁸ Metcalf, Exh. KJM-1T at 3:15-4:5.

²⁴⁹ *Id.* at 18:14-17.

technological advancements, increased use of tug escorts, and other factors help to mitigate the risks posed by increasingly large vessels.²⁵⁰ Metcalf argues that the report cited by Captain Stoller shows that an “infinitesimally small percentage” of vessel movements result in collisions or other incidents.²⁵¹ We come to much the same conclusion that the Commission reached in PSP’s last general rate case, which is that absolute risk is not increasing for pilots in the Puget Sound.²⁵² We therefore decline to increase DNI, beyond what we have already approved, to account for PSP’s concerns with shipping industry practices.

143 Finally, PSP argues that increasing ship size creates greater challenges for safe navigation,²⁵³ and results in an increase in insurance claims.²⁵⁴ As we have explained in the preceding paragraphs, we are not persuaded that absolute risks are increasing for pilots in the Puget Sound, but we have accounted for the relatively greater risks posed by larger vessels by appropriately charging those larger vessels more for pilotage services. The Commission declines to further increase DNI based on this testimony, beyond what we have already authorized.

2. Number of Funded Pilots

144 PSP witness Weldon Burton proposes a revenue requirement with 56 funded pilots.²⁵⁵ Captain Carlson explains that the BPC has authorized 56 pilots and that the association recently licensed its 53rd pilot.²⁵⁶

145 In response testimony, Staff proposes a revenue requirement that is based on a TDNI of \$24,849,544, allocated among 56 funded pilots.²⁵⁷ Staff witness Young is otherwise silent on the number of pilots to fund.

²⁵⁰ *Id.* at 18:17-24.

²⁵¹ *Id.* at 20:10-15 (discussing Stoller, Exh. MSS-3 (International Group of P&I Clubs Report on Claims Involving Vessels Under Pilotage 1999-2019)).

²⁵² Final Order 09 ¶ 360.

²⁵³ *E.g.*, Klapperich, Exh. 34:10-17.

²⁵⁴ McCarthy, Exh. SM-1T at 9:9-15.

²⁵⁵ *See* Burton, Exh. WTB-05.

²⁵⁶ Carlson, Exh. IC-1T at 15:11-14.

²⁵⁷ Young, Exh. MY-9.

- 146 PMSA proposes funding a slightly lower number of pilots, increasing the number to 56 over a three-year rate plan. Captain Moore uses a five-year historical average assignment level (AAL) per-working pilot of 138.9, divided into the 2022 BPC-actual assignment level of 7,483, to arrive at 53.9 working pilot FTEs.²⁵⁸ Captain Moore then adds an additional pilot FTE to represent the role of the PSP president to arrive at a total of 54.9 pilot FTEs to be funded in rate year one.²⁵⁹
- 147 Captain Moore doubts that PSP will be able to fill its pilotage corps to the maximum 56 licenses authorized by the BPC in the coming rate year.²⁶⁰ Because 56 pilots represent the maximum number of funded pilots, Captain Moore proposes the Commission fund 55 pilots in rate year two and 56 pilots in rate year three.²⁶¹ Captain Moore notes the “historically high popularity of the BPC training program,” and the “high retention rates of existing licensees,” which PMSA expects will lead to PSP’s ability to reach 56 pilots over the course of the next three years.²⁶²
- 148 On rebuttal, Captain Carlson argues that the Commission’s decision to determine the number of funded pilots by using a five-year average to determine AAL was problematic because it included 2017 and 2018 data, which was collected prior to when fatigue mitigation rules took effect.²⁶³ Captain Carlson argues it cannot achieve the current AAL of 143.4 without working well over the 5 percent callback ratio it hopes to achieve.²⁶⁴
- 149 In cross-answering testimony, Staff witness Young states that he arrived at 56 funded pilots using the 52 pilot FTEs funded by the Commission in PSP’s existing tariff rates and dividing this into the number of assignments in its last case to determine an AAL.²⁶⁵ Staff states that it used 2022’s actual 7,483 vessel assignments to calculate the required

²⁵⁸ Moore, Exh. MM-1T at 20:12-25. See also Exh. MM-6.

²⁵⁹ *Id.*

²⁶⁰ *Id.* at 20:14-16.

²⁶¹ *Id.*

²⁶² Moore, Exh. MM-1T at 20:12-25.

²⁶³ Carlson, Exh. IC-08Tr at 8:3-6.

²⁶⁴ *Id.* at 8:13-14.

²⁶⁵ Young, Exh. MY-11T at 9:15-21.

number of pilot FTEs, which was rounded to 56.²⁶⁶ However, this methodology is later contradicted in Staff’s response to a Commission Bench Request.²⁶⁷

150 Young addresses the Commission’s use of the pilot FTE concept and states that “regardless of how many actual pilots are available, rates should be set at the level of pilots required to perform the expected service based on average assignment level.”²⁶⁸ This methodology addresses the issue of the PSP president being a licensed pilot and properly maintains the issue of actual licensed pilots as BPC’s responsibility.²⁶⁹

151 In cross-answering testimony, Captain Moore characterizes Staff’s approach as “largely consistent” with the prior rate case.²⁷⁰ Nevertheless, Captain Moore maintains his recommendation to continue the use of the five-year historical average of AAL per-pilot and argues that this alleviates the risk inherent with basing AAL on a single year, which he says may result in “gamesmanship around the test-year” and may result in rates that are either too high or too low.²⁷¹

152 In its Reply Brief, Staff clarifies that it used an average assignment level per pilot, per month, and “then used that number and the projected number of rate year vessel movements to calculate the number of pilots to fund.”²⁷² This generated slightly more than 56 pilots, which Staff rounded down to 56, the BPC’s authorized maximum number of licenses.²⁷³ Staff goes on to state that it is comfortable with either its own or PMSA’s proposed number of pilots.²⁷⁴

153 In its Brief, PMSA argues that PSP’s request for 56 funded pilots is an “unsubstantiated guess that has already proven inaccurate since PSP’s initial filing.”²⁷⁵ Although PSP’s 2022 Audited Financial Statement referred to 56 pilots, PMSA argues that PSP’s auditor

²⁶⁶ *Id.*

²⁶⁷ *See* Staff Response to Commission Bench Request #12; *See* also Attachment 3 (“12-month P&L”).

²⁶⁸ *Id.* at 10:5-7.

²⁶⁹ *Id.* at 10:7-13.

²⁷⁰ Moore, Exh. MM-63T at 10:14-16.

²⁷¹ *Id.* at 13-14:19-4.

²⁷² Staff Reply Brief ¶ 13.

²⁷³ *Id.*

²⁷⁴ *Id.* ¶14.

²⁷⁵ PMSA Brief ¶ 26.

Norris could not explain the discrepancy and indicated that the three additional pilots may have been retired pilots who surrendered their licenses and were “burning” comp days.²⁷⁶ PMSA argues that the actual number of working pilots were able to safely complete all assignments and that the evidence does not support funding 56 pilots, as Staff proposes.²⁷⁷

154 PMSA therefore argues that the Commission should maintain the five-year AAL methodology.²⁷⁸ PMSA argues that if Staff adjusted 2021 vessel assignments by 2022 cruise ship traffic this would result in a lower AAL and a lower number of funded pilots.²⁷⁹

155 In its post-hearing Reply Brief, PSP argues that “the current number of licensees is undisputed at 53” and that PMSA “has offered no evidence to show that PSP’s projection of licensure dates for trainees currently in the BPC training pipeline is inaccurate.”²⁸⁰

156 *Commission Determination.* We find that 56 FTE pilots should be funded in the rate year. To hold otherwise would tend to normalize an unrepresentative decline in vessel traffic related to the COVID-19 pandemic into rates.

157 In Final Order 09, the Commission distinguished between its role as the economic regulator and the BPC’s role as the safety and licensing authority. The Commission used the term “average assignment level” or AAL to make clear that it was determining a number of funded pilots only for rate-setting purposes.²⁸¹ The Commission adopted Staff’s proposal for determining an AAL based on a five-year average of pilot assignments from 2014 to 2018,²⁸² and it included the PSP President as an administrative pilot who does not accept regular on-watch assignments.²⁸³ The Commission made clear

²⁷⁶ *Id.* ¶ 31 (Norris, TR. at 788:10 – 789:18).

²⁷⁷ *Id.* ¶¶ 37-38.

²⁷⁸ *Id.* ¶ 39.

²⁷⁹ *Id.* ¶¶ 41-43.

²⁸⁰ PSP Reply Brief ¶ 35.

²⁸¹ Final Order 09 ¶ 86.

²⁸² *Id.* ¶ 85.

²⁸³ *Id.* ¶ 101.

that it did not determine a “target assignment level” for purposes of safety or fatigue management, because “these issues fall squarely within the BPC’s purview.”²⁸⁴

158 In this case, we again emphasize the Commission’s limited role as the economic regulator of pilotage services. Although the facts and circumstances may vary over time, rate-setting proceedings before the Commission should support the provision of pilotage services deemed necessary by the BPC. By determining the number of funded pilots based on an averaging of recent pilot assignments, the Commission determines PSP’s additional annual revenue requirement and provides reasonable compensation to pilots without intruding into areas properly reserved for the BPC.

159 Yet we are concerned that continuing the methodology from Final Order 09 without modification would inappropriately normalize the effects of the COVID-19 pandemic into rates. By using the five-year average adopted in Final Order 09, Captain Moore incorporates the relatively low assignments from 2020 into the AAL.²⁸⁵ In our judgment, this would unreasonably base the number of funded pilots in the rate year on 2020 vessel traffic that was abnormally low, unrepresentative of the rate year, and unlikely to recur. The Commission found in Final Order 09 that the number of funded pilots should not be reduced given the COVID-19 pandemic.²⁸⁶ We arrive at much the same conclusion here. A reasonable end-result weighs more in our minds than continuing the methodology set out in Final Order 09 without regard for changing circumstances.

160 We therefore find it fair, just, reasonable, and sufficient to adopt PSP’s and Staff’s proposal for 56 funded pilots in the rate year. Staff clarifies that it arrived at 56 funded pilots using monthly AALs during the test year, and then used the projected rate year vessel assignments to calculate the required number of pilot FTEs.²⁸⁷

161 PMSA challenges Staff’s methodology in this case and argues that relying on 2021 data, adjusted by 2022 cruise ship traffic, supports a lower number of funded pilots.²⁸⁸ But as

²⁸⁴ *Id.*

²⁸⁵ Moore, Exh. MM-6 (noting 122.1 average assignments per pilot in 2020 and 5,948 total assignments for the year). *But see* Carlson, Exh. IC-08Tr at 13:18 (noting a total of 6,110 assignments in 2020).

²⁸⁶ Final Order ¶ 105 (“[W]e find that adjusting the number of funded pilots downward in year two due to the decline in vessel traffic related to the COVID-19 pandemic would be neither reasonable nor appropriate.”).

²⁸⁷ Staff Reply Brief ¶ 13.

²⁸⁸ *See* PMSA Brief ¶¶ 41-43.

Captain Moore acknowledges, Staff's recommendation is "largely consistent" with the prior rate case.²⁸⁹ Captain Moore notes that in the prior rate case Staff argued that "no matter what the calculation, the number used for the calculation of the number of pilots should fall within a range bounded by the actual number of pilots and the number of BPC authorized pilots."²⁹⁰

162 Although the basis for Staff's position should have been articulated in response testimony, we find that Staff arrives at a reasonable end result that avoids normalizing 2020 vessel traffic into rates.

163 The same result can be reached by using data only from 2021 and 2022, which does not include the abnormally low vessel traffic from 2020 or rely on data from 2017 and 2018 that reflects less stringent rest rules.²⁹¹ In 2021, 52 pilots completed 6,953 assignments, which provides an AAL of 133.7.²⁹² If the total number of 7,483 vessel assignments from 2022 are divided by this same AAL of 133.7, this would result in 55.9 funded pilots.²⁹³ The Commission rounds this number upwards to 56 for the sake of reasonableness, administrative simplicity, and consistency with the number of pilots authorized by the BPC.

164 Thus, we agree with PSP and Staff that the Commission should fund 56 pilots in the rate year. It may take time for additional licensed pilots to join the association, but this means that the actual working pilots will be required to take on additional assignments in the interim. As the Commission recognized in Final Order 09, "[b]y funding additional pilots above the number of currently working pilots," the Commission's methodology "proposes to place a 'premium' into rates that will then be distributed among the pilots,

²⁸⁹ Moore, Exh. MM-63T at 10:14-16.

²⁹⁰ *Id.* at 10:20-23.

²⁹¹ *See* Carlson, Exh. IC-08Tr at 8:3-9 (arguing that Final Order 09's decision to use a five-year average was problematic because it included 2017 and 2018 data that reflected less stringent rest rules).

²⁹² *See* Staff Response to Bench Request 12, Attachment 3, tab 12-month P&L, column Q, rows 126-131 (indicating that 52 pilots completed 6,953 assignments in 2021).

²⁹³ PMSA's Brief provides a similar calculation but refers to a total of 7,443 vessel assignments in 2022 rather than 7,483 as shown in the underlying Exhibit MM-6. *Compare* PMSA Brief ¶ 42 (citing Staff Response to Bench Request No. 12 at Attachment 3) *with* Moore, Exh. MM-6. This results in a relatively immaterial difference between 55.7 funded pilots as calculated in PMSA's Brief (7,443 vessel assignments divided by 133.7 assignments per pilot) with the 55.9 funded pilots discussed in this paragraph.

reflecting the value of their additional work.”²⁹⁴ Our adjustment to the number of licensed pilots, based on an averaging of recent pilot assignments, reflects not merely the known and measurable increases in the actual number of working pilots but the workload that the actual working pilots are expected to perform.

3. Retirement

165 This case raises several issues as to whether PSP complied with Final Order 09. The first that we address concerns the potential transition of PSP’s retirement plan and the association’s recovery of those costs going forward. In Final Order 09, the Commission determined that PSP’s current, pay-as-you-go pension plan was fiscally unsound and vulnerable to changing economic conditions.²⁹⁵ In contrast, a fully-funded, defined benefit plan would “provide security and confidence in the long-term viability of the promised retirement benefits to current and future pilots.”²⁹⁶ The Commission therefore continued PSP’s pay-as-you-go retirement plan but ordered PSP to, among other requirements, initiate discussions with interested parties to develop a plan to transition to a fully funded, defined-benefit retirement plan.²⁹⁷

166 PSP Executive Director Costanzo notes that PSP began the retirement workshop process in late January 2022 and continued through mid-June.²⁹⁸ Four meetings were held with interested parties in March, April, and May.²⁹⁹ Further phone calls and conversations resulted in an agreement among PSP and two interested parties – Pacific Yacht Management (PYM) and Northwest Marine Trade Association (NWMTA) – but PSP remained at an impasse with PMSA.³⁰⁰

167 Costanzo argues that the lack of progress with PMSA was due to its unwillingness to agree that ratepayers should cover the costs of the pension benefits promised to current retirees and all current Puget Sound pilots.³⁰¹ Despite multiple engagement sessions over three months, it took PMSA until May to engage its own actuary and, as of June 6, 2022,

²⁹⁴ Final Order 09 ¶ 94.

²⁹⁵ *Id.* ¶ 194.

²⁹⁶ *Id.* (internal citation and quotation omitted).

²⁹⁷ Final Order 09 ¶ 191.

²⁹⁸ Costanzo, Exh. CPC-1T at 8:22-23.

²⁹⁹ *Id.* at 9:2-6.

³⁰⁰ *Id.*

³⁰¹ Costanzo, Exh. CPC-1T at 10:3-6.

it took no position.³⁰² Costanzo maintains that PSP made a good faith effort to comply with Final Order 09's instructions.³⁰³

168 Captain Carlson explains that PSP supports transitioning its pay-as-you-go pension plan to a fully funded, defined-benefit plan but opposes any suggestion that the benefit levels should be reduced.³⁰⁴

169 PSP provides testimony from attorney and consultant Bruce McNeil. McNeil argues that the existing pay-as-you-go pension plan is a binding legal obligation.³⁰⁵ Existing retirees and current member pilots have enforceable legal rights against PSP for the benefits earned during their years of service.³⁰⁶

170 McNeil further explains that it is feasible for PSP to transition its retirement plan to a fully funded, defined-benefit plan in a manner that delivers the benefits promised in the existing pay-as-you-go plan.³⁰⁷ McNeil recommends a multiple employer plan (MEP).³⁰⁸ To establish the MEP, PSP would submit a letter to the Internal Revenue Service (IRS) seeking a favorable determination, which McNeil is confident would be granted.³⁰⁹ PSP would also seek an Advisory Opinion from the Department of Labor regarding PSP's status as a plan sponsor under section 3(5) of Employee Retirement Income Security Act of 1974, as amended (ERISA).³¹⁰ McNeil submits that this process would take no more than 12 months.³¹¹

171 McNeil argues that it is not feasible to establish a defined contribution plan because none of these plan types will allow sufficient levels of contributions to provide the same benefits as PSP's current unfunded pension plan.³¹² McNeil also notes that there is

³⁰² *Id.* at 10:13-15.

³⁰³ *Id.* at 11:1-4.

³⁰⁴ Carlson. Exh. IC-1T at 11:6-8.

³⁰⁵ McNeil, Exh. BJM-1T at 2:25-4:12.

³⁰⁶ *Id.* at 3:15-22.

³⁰⁷ *Id.* at 4:21-5:1.

³⁰⁸ *Id.* at 5:3-5.

³⁰⁹ *Id.* at 9:14-24.

³¹⁰ *Id.* at 9:23-10:2.

³¹¹ *Id.* at 10:8-10.

³¹² McNeil, Exh. BJM-1T at 7: 7-9.

significant cost and risk associated with independent contractors creating an individual defined benefit plan.³¹³

172 PSP also provides testimony from actuary Christopher Wood, who served as an actuary during the transition of Oregon pilot groups from pay-as-you-go to funded pensions in the 1990s,³¹⁴ but he testifies that the MEP as proposed by McNeil is preferable to the individual defined contribution plans adopted by the Oregon Board of Maritime Pilots in 1995.³¹⁵ The primary benefit, Wood cites, is the ability to pool mortality rates across the group.³¹⁶

173 Wood testifies that transitioning current and future working pilots to an MEP would have significant cost savings.³¹⁷ Wood compares the costs of three different options over a 50-year period, as shown in Table 2.³¹⁸

Table 2: PSP Approaches to 50 Year Cost of Funding Pension Plan

Scenarios	Retirement program	Cost
1	Continues the pay-as-you-go pension program (status quo).	\$472 million ³¹⁹
2	Continues the pay-as-you-go system for retirees only as of July 1, 2022, and funds pension benefits for all current and future working pilots (both past and future accruals).	\$337 million ³²⁰

³¹³ *Id.* at 4: 1-4.

³¹⁴ Wood, CRW-1T at 1:13-17.

³¹⁵ *Id.* at 2:6-7.

³¹⁶ *Id.* at 4:25-26.

³¹⁷ Wood, Exh. CRW-1T at 4: 22-5:4.

³¹⁸ *Id.* at 1:22-2:3.

³¹⁹ Wood, Exh. CRW-1T at 3:12.

³²⁰ *Id.* at 3:15.

3	Continues funding for both existing retirees and past pension accruals for working pilots as of July 1, 2022, on a pay-as-you-go basis and then funds future pension accruals for working pilots and future licensees in a funded defined benefit plan.	\$354 million ³²¹
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187 Wood concludes that transitioning to a fully funded defined benefit retirement plan (option 2 in Table 2) covering past service accruals and future accruals for working pilots will save approximately \$135 million over 50 years.³²² The alternative fully funded defined benefit retirement plan (option 3 in Table 2) has savings of approximately \$118 million.³²³

188 PSP maintains that the costs of its retirement programs are appropriately recovered through its tariff. PSP witness Jessica Norris argues that “. . . pension payments made to PSP retirees have steadily increased over the five-year period of 2017-2021, from 12.6% of total revenue in 2017, 20.4% in 2020, and 17.3% in 2021.”³²⁴ Walter Tabler testifies that (1) PSP has a “legal and moral obligation” to pay the benefit levels promised to its retirees, (2) PSP’s tariff has funded pilot pension benefits for more than 30 years, and (3) retaining PSP’s current 1.5 percent annual pension accrual rate is key to providing a nationally competitive compensation and benefits package.³²⁵

189 Tabler argues further that annual pension costs are funded by a tariff for every pilotage district with a pay-as-you-go plan.³²⁶ Tabler also cites RCW 88.16.055(1) and WAC 363-116-315 as supporting the inclusion of pension costs in the tariff.³²⁷

³²¹ *Id.* at 3:19.

³²² *Id.* at 3:21.

³²³ *Id.* at 3:26.

³²⁴ Norris, Exh. JJN-01T at 5:5-7.

³²⁵ Tabler, Exh. WST-1T at 5:8-20.

³²⁶ *Id.* at 4:13-14.

³²⁷ *Id.* at 4:19-20.

- 190 PSP proposes a pro forma adjustment of approximately \$900,000 for its current pay-as-you-go pilot pension program.³²⁸ Burton explains that an adjustment was made to account for the death of two retirees and the addition of three new retirees for 2023.³²⁹
- 191 PSP also proposes two automatic tariff adjusters for pilot retirement costs. Captain Carlson first proposes an automatic tariff adjuster that annually adjusts based on tonnage to collect the amount necessary to cover the annual cost of the pay-as-you-go pension benefits paid to PSP retirees and to fund the pension pay-as-you-go for non-retired pilots prior to a funded pension plan transition date.³³⁰ Next, Captain Carlson proposes a tariff rider to recover costs necessary to fund the transition to a fully funded defined benefit pension plan.³³¹ PSP also proposes an annual automatic tonnage-based update for this tariff adjuster.
- 192 In response testimony, Staff witness Young recommends denying PSP’s proposed pro forma adjustment for retirement expenses.³³² Because PSP did not complete mediated discussions as required by Final Order 09, Young argues that any costs are based on “projections and estimates” that do not “have much of a grounding in fact.”³³³ Young proposes leaving pension plan costs at the level of the previous rate case because those costs are the best available known and measurable substitute for future pension costs.³³⁴
- 193 Young also recommends that the Commission reject PSP’s proposed tariff adjusters for retirement expenses.³³⁵ Young “believes the more correct treatment will involve a revised tariff based on a revenue requirement calculated using known and measurable pension costs once the new pension plan has been determined.”³³⁶
- 194 In response testimony for PMSA, Captain Moore argues that PSP’s proposed MEP is novel and untested, with its structure, costs, legality, and potential administrative burden

³²⁸ Burton, Exh. WTB-5r (Pilot Pension Tab).

³²⁹ Burton, Exh. WTB-04Tr at 13:2-7.

³³⁰ Carlson, Exh. IC-1T at 31:7-10.

³³¹ *Id.* at 31:11-13.

³³² Young, Exh. MY-1T at 22:16.

³³³ *Id.* at 22:16-20.

³³⁴ *Id.* at 22:23, 24:1-2.

³³⁵ Young, Exh. MY-1T at 17:9-10.

³³⁶ *Id.* at 17:2-5.

raising significant unanswered questions.³³⁷ Captain Moore would support a transition from the “pay-as-you-go” current pension plan to a defined benefit plan that would reduce pilot expenses and reduce unnecessary increases in revenue.³³⁸ Captain Moore supports efforts to explore these options using an approach that does not transfer pilots’ deferred compensation obligations to ratepayers.³³⁹

195 PMSA also submits testimony from actuary Christopher Noble. Noble argues that PSP does not properly address the significant obstacles to maintaining a tax-qualified defined benefit MEP.³⁴⁰ These obstacles include legislative restrictions that prevent the plan from providing the same benefits as the current plan as well as onerous administrative expenses.³⁴¹ Noble provides an analysis of PSP’s 50-year contribution projections, identifying important caveats made by PSP, assessing the risks associated with each of PSP’s assumptions, and providing two alternative projections using changed assumptions.³⁴²

196 In rebuttal testimony, PSP witness Burton defends the proposed pro forma adjustment for retirement expenses, arguing that these funds are necessary to meet the association’s obligations to current retirees.³⁴³ Burton submits that this pension obligation is dictated by the number of retired pilots, which is known and measurable.³⁴⁴

197 PSP Executive Director Costanzo argues that PMSA’s arguments against the funding of pension costs in tariff rates were considered and rejected by the Washington Supreme Court in *State ex rel. Pacific Telephone & Telegraph Co. v. Department of Public Service*, 19 Wash.2d 200 (1943) (*Pacific Telephone*).³⁴⁵ Costanzo cites two main parallels between the case at hand and *Pacific Telephone*. First, PSP’s original decision to adopt

³³⁷ Moore, Exh. MM-1T at 234:9-13.

³³⁸ *Id.* at 235:7-10.

³³⁹ *Id.* at 235:13-16.

³⁴⁰ Noble, Exh. CN-1T at 3:25-26,4:1.

³⁴¹ *Id.* at 3:25-26,4:1-5.

³⁴² Noble, Exh. CN-1T at 4:21-23, Noble, Exh. CN-1T at 6:15-22, Noble, Exh. CN-1T at 7:1-24,8:1-26,9:1-18, and Noble, Exh. CN-1T at 12:17-25,13:1-5.

³⁴³ Burton, Exh. WTB-08T at 7:3-9.

³⁴⁴ *Id.* at 7: 9-10. The witness also testifies that since the end of the 2021 test year, PSP had two pilots reach the mandatory age of retirement and another two pilots retiring. Burton, Exh. WTB-08T at 7:10-11.

³⁴⁵ Costanzo, Exh. CPC-22T at 30:9-14.

and maintain a defined benefit pension plan similar to other pilot groups must be funded through the tariff, regardless of how many other pension options may be developed.³⁴⁶

Second, the fact that present ratepayers are paying for the benefits of retired pilots who are no longer providing services is not a reason for rejecting that expense.³⁴⁷

198 McNeil argues that PMSA witness Noble has “no expertise” in pension law and that his objections to the feasibility of the proposed MEP have “no merit.”³⁴⁸ McNeil remains confident that the IRS and Department of Labor will issue favorable determination letters “[b]ased upon my discussions with key personnel in both of these agencies . . .”³⁴⁹ McNeil provides drafts of two letters that would be submitted to the IRS and Department of Labor in conjunction with his rebuttal testimony.³⁵⁰

199 Wood provides rebuttal testimony defending the assumptions used in his 50-year cost-projection.³⁵¹ For instance, Wood defends his assumption that a professionally managed pension trust would earn a rate of return at least comparable to corporate bonds.³⁵² Wood also provides updated 50-year cost projections. After updating the number of working pilots and DNI distributions, Wood concludes that the proposed MEP still offers significant savings.³⁵³

200 In cross-answering testimony, Young acknowledges that Staff has not provided testimony from an actuary to question PSP’s cost projections.³⁵⁴ Young agrees with PMSA,

³⁴⁶ *Id.* at 28:23-25, 29:1.

³⁴⁷ *Id.* at 29:1-3.

³⁴⁸ McNeil, Exh. BJM-4T at 1:8-14.

³⁴⁹ *Id.* at 3:5-9. *See also id.* at 4:23-8:14 (addressing the legality and cost-effectiveness of the proposed MEP).

³⁵⁰ McNeil, Exh. BM-5; McNeil, Exh. BM-6.

³⁵¹ Wood, Exh. CRW-6T at 4:20-5:25.

³⁵² *Id.* at 5:2-6.

³⁵³ *See id.* at 6:20-24 (“In summary, the 50-year total cost under the farebox is now estimated to be \$547,402,000, the 50-year total cost under Alternative 1 is \$423,370,000, and the 50-year total cost under Alternative 2 is \$447,427,000, resulting in potential savings under Alternative 1 of \$124 million and savings under Alternative 2 of \$100 million.”).

³⁵⁴ Young, Exh. MY-11T at 7:9-20.

however, that PSP did not follow the Commission's directions and that any adjustments or surcharges would be premature.³⁵⁵

- 201 Captain Moore likewise indicates his agreement with Staff that the pro forma adjustment should be removed and that the automatic adjusters for retirement expenses should be denied.³⁵⁶
- 202 *Commission Determination.* PSP should seek approval of its proposed MEP from the IRS and Department of Labor. We otherwise reserve ruling on the prudence of the MEP or any automatic adjuster to recover its costs until those costs are known and measurable.³⁵⁷ PSP may continue to recover the costs of its retirement plan in rates based on the costs approved in Final Order 09 with a reduced pro forma retirement expense adjustment.
- 203 The rate-setting process provides PSP, like other regulated entities, the opportunity to recover prudently incurred expenses.³⁵⁸ Further, like in other regulated industries, the Commission expects companies to comply with Commission orders. In Final Order 09, the Commission determined that PSP's current, pay-as-you-go pension plan was fiscally unsound and vulnerable to changing economic conditions.³⁵⁹ In contrast, a fully-funded, defined benefit plan would "provide security and confidence in the long-term viability of the promised retirement benefits to current and future pilots."³⁶⁰
- 204 The Commission therefore continued PSP's pay-as-you-go retirement plan but ordered PSP to initiate discussions with interested parties to develop a plan to transition to a fully

³⁵⁵ *Id.* at 7:17-20.

³⁵⁶ Moore, Exh. MM-63T at 19:15-20:5.

³⁵⁷ It is the Commission's long-standing practice to define known and measurable as the following:

The known and measurable standard continues to require that an event that causes a change to revenue or expense must be "known" to have occurred during or after the historical 12-months of actual results of operations. It is the Company's burden to demonstrate (*i.e.*, known) that the effect of the event will be in place during the rate year. The actual amount of the change must also be "measurable." This has historically meant that the amount cannot be an estimate, projection, product of a budget forecast, or some similar exercise of informed judgment concerning future revenue or expense.

Wash. Utils. & Transp. Comm'n v. Avista Corp. d/b/a Avista Utils., Docket Nos. UE-090134 & UG-090135, Order 10, 21 ¶¶ 45, 49 (Dec. 9, 2009).

³⁵⁸ Final Order 09 ¶ 36.

³⁵⁹ *Id.* ¶ 194.

³⁶⁰ *Id.* (internal citation and quotation omitted).

funded, defined-benefit retirement plan.³⁶¹ The Commission required parties to also discuss addressing “whether active pilots should be required to contribute directly to PSP’s retirement fund.”³⁶² The parties were also required to discuss the issue of retirement payments to PSP’s former executive director.³⁶³ The Commission held that these discussions should be “facilitated by a mutually acceptable third-party with expertise in retirement planning, such as an actuary, and should be concluded prior to PSP’s next general rate case.”³⁶⁴ PSP was required to submit a comprehensive interested persons evaluation and a participation study at the conclusion of the process.³⁶⁵

205 In this case, PSP requests that the Commission approve its proposed MEP and its adjusted test year pro forma retirement expense. We turn first to the MEP. PSP states that it is seeking two favorable determination letters from the IRS and Department of Labor and that this may take as much as a year. PSP requests that we approve the transition to its proposed MEP effective January 1, 2025.³⁶⁶ The record contains conflicting evidence as to the feasibility and potential costs of the MEP, but we conclude that PSP should be provided an opportunity to seek these determination letters.

206 Before we fully discuss the proposed MEP, we comment on the procedural history of this case and the way this issue developed. Although Final Order 09 contemplated a series of workshops, concluding in reports that would be included in PSP’s next general rate case, PSP failed to comply with Final Order 09 in several respects. Instead of hiring a mutually acceptable third-party, PSP hired its own actuary and selected a mediator of its own choosing before consulting with PMSA and other interested parties.³⁶⁷ Instead of discussing whether active pilots should be required to contribute directly to the retirement fund, as required by Final Order 09, PSP refused to discuss whether individual pilots

³⁶¹ Final Order 09 ¶ 191.

³⁶² *Id.* ¶ 191.

³⁶³ *Id.* ¶ 194.

³⁶⁴ *Id.* ¶ 192.

³⁶⁵ *See id.* (using the term “comprehensive stakeholder evaluation”).

³⁶⁶ PSP Reply Brief ¶ 25.

³⁶⁷ Moore, Exh. MM-1T at 254:4-17. *See also* Costanzo, Exh. CPC-8T at 1 (providing notice of the first workshop and indicating that actuary Wood would be presenting and available for questions).

should be required to directly contribute to their own retirement plan.³⁶⁸ And PSP failed to include any comprehensive interested party evaluation or participation study in its rate case.³⁶⁹ PSP's non-compliance with Final Order 09 influences our decision for both the proposed MEP and the recovery of test year pro forma retirement expense.

207 PSP witness Costanzo argues that the association had “no obligation to engage in an unnecessarily long and unproductive stakeholder process with PMSA,”³⁷⁰ and Costanzo argues, along with other PSP witnesses, that pension costs must be included in tariff rates.³⁷¹ Yet PSP is not free to disregard the Commission's order without seeking clarification, review, or appealing the decision. Final Order 09 remained final and binding on PSP.

208 Because “[t]he Commission rarely exercises its discretion to reject a company's case entirely and conclude that existing rates should remain in effect,”³⁷² we decline to dismiss PSP's case outright. Yet this is a material issue that has affected the development of the record. The Commission does not have the benefit of work products or reports from the workshops that would help inform our decision in this Order.³⁷³ PSP should also be aware that the Commission may choose to issue penalties or reject a rate case filing for such behavior in the future.

209 PSP has also affected the development of the record by withholding information in response to data requests. “[O]ffering an attorney's testimony concerning matters learned in the course of his employment waives the attorney-client privilege.”³⁷⁴ Nonetheless, claiming attorney-client privilege, PSP objected to every data request issued by PMSA regarding McNeil's and Wood's opinions.³⁷⁵ PSP asserted attorney-client privilege for

³⁶⁸ *Id.* at 252:4-8. *See also* Costanzo, Exh. CPC-14 at 2 (“While PMSA has repeatedly suggested in the stakeholder sessions that a host of other pension plan options – 401(k) plans, SEP plans, IRAs and individualized defined benefit plans – should be considered, PSP has made clear that none of these are in the cards.”).

³⁶⁹ Moore, Exh. MM-1T at 252:22-26.

³⁷⁰ Costanzo, Exh. CPC-1T at 11:12-13.

³⁷¹ *E.g.*, Costanzo, Exh. CPC-22T at 30:9-14.

³⁷² *WUTC v. Cascade Natural Gas Corp.*, Docket UG-200568 Final Order 05 ¶ 47 (May 18, 2021).

³⁷³ *See* Moore, Exh. MM-1T at 261:16-20.

³⁷⁴ *See, e.g., Kammerer v. W. Gear Corp.*, 27 Wn. App. 512, 516 (Wa. Ct. App. Div. I 1980).

³⁷⁵ *See generally* Noble, Exh. CN-4.

McNeil, whose opinion was already provided in direct testimony. PSP also asserted attorney-client privilege for Wood, who was not an attorney at all, but an actuary. PSP then filed rebuttal testimony from McNeil addressing many of the issues it refused to disclose in response to data requests.³⁷⁶ Given these aggressive litigation strategies, we remain concerned that McNeil's and Wood's testimonies have not been subject to vetting and questioning that would occur in the normal course of a litigated rate case.

210 Bearing these issues in mind, we observe that PSP and PMSA disagree over the feasibility of the proposed MEP. We share PMSA's concerns, for example, that PSP may not have fully accounted for ERISA contribution limits. Noble argues that ERISA may prevent the MEP from providing the same benefits as the current plan and that PSP did not appear to account for this fact.³⁷⁷ In rebuttal, PSP witness McNeil explains that the MEP may avoid any concerns with ERISA compensation limits if the accrual factor is increased.³⁷⁸ Yet this represents a modification of PSP's original proposal and the assumptions used in Wood's 50-year cost projections.³⁷⁹ While we are persuaded that there may be a path to avoid any issues with ERISA compensation limitations, we remain concerned that this may require modifications to the accrual factor that were not fully considered by the parties.

211 There also remains some uncertainty as to whether PSP qualifies as an employer for purposes of the MEP. McNeil also provides draft determination letters that, among other points, seek a determination on whether PSP may qualify as an "employer" for purposes of administering the MEP under ERISA.³⁸⁰ McNeil also testified at the evidentiary hearing that he received "a provisional opinion, if you will" that the MEP would be approved.³⁸¹ These legal issues are outside of the Commission's jurisdiction and clearly require a formal determination by the relevant federal agencies.

³⁷⁶ Compare Noble, Exh. CN-4 at 19 (requesting that PSP address whether it would be required to file a Form 5500 with the IRS for each participating employer) with McNeil, Exh. BJM-4T at 5:22-6:14 (answering the question, "Do you agree with Mr. Noble's concern that a Form 5500 would need to be filed with IRS annually for each participating employer as if that employer maintained a separate pension plan?").

³⁷⁷ Noble, Exh. CN-1T at 17:3-19. See also *id.* at 9:5-18.

³⁷⁸ McNeil, Exh. BJM-4T at 7:2-15 (using an accrual rate of 1.864 percent per year).

³⁷⁹ See Wood, Exh. CRW-1T at 2:26 (using an accrual rate of 1.5 percent per year).

³⁸⁰ See McNeil, Exh. BJM-6 at 1.

³⁸¹ Tr. at 448:6-15.

- 212 Given these circumstances, the Commission anticipates that PSP has already submitted an IRS Determination Letter Request and a Department of Labor Advisory Opinion Request with each respective federal agency. We require PSP to file the final version of these letters as a compliance filing in this Docket if the versions in the record have changed in any way. We also require PSP to file any responses by the respective federal agencies as an additional compliance filing(s) in this Docket as they become available. Further, PSP is required to file status updates as a compliance filing in this Docket every 60 days, beginning 60 days from the effective date of this Order. If both the IRS and Department of Labor issue favorable determination letters approving PSP's proposed MEP, PSP may submit a subsequent filing to the Commission, which will be assigned a new Docket number, seeking to adjust tariff rates to recover MEP costs.³⁸² The Commission expects any such subsequent filing will account for offsetting savings resulting from the transition to the MEP as well as any costs. PSP may alternatively seek recovery of MEP costs in its next general rate case.
- 213 To be clear, we do not share all the concerns identified by PMSA. Noble argues that Wood failed to account for administrative expenses and that these may be "disproportionate" for the plan's size.³⁸³ Wood credibly argues on rebuttal, however, that any administrative expenses would represent only a fraction of savings represented by transitioning to the MEP.³⁸⁴
- 214 We do not instruct PSP on the exact details or nature of the proposed MEP. PSP has provided evidence of two different methods of addressing past service accruals under the MEP, either of which result in cost savings.³⁸⁵ The Commission seeks to incentivize efficiency rather than dictate specific management decisions.
- 215 Next, we turn to the issue of PSP's proposed pro forma retirement expense adjustment. PSP argues that this pro forma adjustment reflects known and measurable expenses.
- 216 We share many of Staff's and PMSA's concerns with this pro forma adjustment.³⁸⁶ As we have observed in this Section, PSP failed to comply with Final Order 09 in several respects. PSP did not discuss whether member pilots should be required to contribute to

³⁸² Compare WAC 480-07-885 (Subsequent filings) with WAC 480-07-880 (Compliance filings).

³⁸³ Noble, Exh. CN-1T at 17:3:19.

³⁸⁴ Wood, Exh. CRW-6T at 9:1-6.

³⁸⁵ Wood, Exh. CRW-1T at 3:21-26.

³⁸⁶ See Staff Brief ¶¶ 31-33. Accord PMSA Brief

the retirement plan; it did not select a mutually agreeable facilitator for the retirement workshops; and it did not prepare a comprehensive interested parties evaluation. In essence, PSP seeks to recover increased retirement plan costs that it was ordered to, and failed to, properly discuss with interested persons before filing this rate case.

217 Furthermore, while PSP’s retirement costs may be considered known and measurable the Commission in its discretion determines that a portion of the pro forma retirement expense adjustment should not be allowed into rates because of PSP’s non-compliance with Final Order 09. PSP also fails to account for offsetting factors which is an important consideration when proposing and evaluating pro forma adjustments.³⁸⁷

218 For these reasons, we conclude that one-half of PSP’s pro forma retirement expense adjustment should be allowed into rates, or approximately \$450,000, until PSP’s next general rate case. The Commission retains broad discretion to allow recovery of expenses to result in fair, just, reasonable, and sufficient rates, and under compelling circumstances, unreasonable or excessive expenses may simply be reduced.³⁸⁸ Further, the Commission exercises its authority to require compliance with its orders. We expect PSP to comply with Final Order 09 and the decisions in this Order.

219 In making this finding, we reject PSP’s argument that the Commission must allow its retirement plan expenses into rates pursuant to *State ex rel. Pacific Telephone and Telegraph Company v. Department of Public Service*, 19 Wash.2d 200 (1943). The court in *Pacific Telephone and Telegraph* was concerned with pension costs for *employees* rather than independent contractors.³⁸⁹ The court applied an abuse of discretion standard when reviewing the actions of *the company’s officers*, reflecting a long-superseded standard of review.³⁹⁰ The court noted that the Department of Public Service may have made a different decision if the plan was instituted after the creation of the Social Security program.³⁹¹ The court also acknowledged that the evidence may support a

³⁸⁷ *WUTC v. Cascade Natural Gas Corporation*, Docket UG-200568 Final Order 05 ¶ 305 (May 18, 2021) (“It is well-established that utilities must account for offsetting costs when proposing pro forma adjustments.”).

³⁸⁸ *See, e.g., WUTC v. Puget Sound Power & Light Co.*, Cause No. U-85-53 Second Suppl. Order (May 16, 1986) (“The respondent already had accounting services available; the fee appears to be excessive for the services rendered. One half of the fee will be allowed.”).

³⁸⁹ *Id.* at 252.

³⁹⁰ *See id.* at 257.

³⁹¹ *Id.* at 255.

different decision under a different set of facts.³⁹² *Pacific Telephone and Telegraph* is distinguishable for all of these reasons.

220 Because the Commission does not yet know whether the IRS and Department of Labor will grant favorable determinations on the proposed MEP, we decline to approve PSP's proposed automatic adjuster for recovering the costs of the transition to a defined benefit retirement plan.³⁹³ The Commission will consider the appropriate treatment of these costs in a future proceeding.

221 We also decline to adopt PSP's proposed automatic adjuster to recover its pay-as-you-go pension benefits paid to retirees.³⁹⁴ This is consistent with our decision to allow only half of PSP's pro forma adjustment for continuing costs under the current system, as explained above in this section. We also decline to approve PSP's proposed automatic adjuster for the recovery of MEP costs. It is unclear whether the proposed MEP will be approved by relevant federal agencies. If it is approved, the Commission declines to instruct PSP on the exact form of the program, *i.e.*, whether it should reflect Wood's option 2 or option 3 in his 50-year cost projections. PSP may propose this automatic adjuster in the subsequent filing or in its next general rate case when it seeks to recover MEP costs.

4. Pilot medical expenses

222 PSP witness Burton requests that the Commission reverse its decision to require pilots to fund their own medical insurance expenses through DNI and requests recovery of these costs in operating expenses.³⁹⁵ Burton argues that 9 of the 12 pilotage groups studied by Lough offer pilot medical insurance funding through their tariffs.³⁹⁶ PSP requests recovery of approximately \$1.9 million in pilot medical insurance expenses, which includes a pro forma adjustment of approximately \$240,000 to reflect expected 2023 medical premiums for 56 pilots.³⁹⁷

³⁹² *Id.* at 260.

³⁹³ *See* Carlson, Exh. IC-1T at 31:11-13.

³⁹⁴ *See id.* at 31:7-10.

³⁹⁵ Burton, Exh. WTB-04Tr at 10:5-11.

³⁹⁶ *Id.* at 10:12-14 (citing Lough, Exh. DL-06). *See also* Johnson, Exh. AJ-1T at 7:1-7 (testifying that Johnson receives paid medical benefits as a union-represented officer for Subcom).

³⁹⁷ Burton, Exh. WTB-05r ("Pilot Medical").

- 223 Staff witness Young does not directly oppose PSP’s request for pilot medical expenses. However, Young recommends that these expenses are “removed from the revenue requirement and added to the proposed DNI amount . . .”³⁹⁸ Young notes that “[t]his ensures that pilot compensation will increase to off-set the expense decrease.”³⁹⁹
- 224 PMSA witness Captain Moore argues that Final Order 09 required pilots to fund their own health insurance through DNI distributions and that the Commission should decline to revisit this issue.⁴⁰⁰ Captain Moore submits, “[b]ecause the Commission clearly stated that it expected pilots to fund their own medical insurance expenses through their DNI after the end of Year 2 of the current tariff, the pilot’s pro-forma should show a \$0 for pilots’ medical insurance.”⁴⁰¹
- 225 In rebuttal testimony, Burton maintains that pilots are not only independent contractors but owners of PSP.⁴⁰² Burton argues that the Commission commonly allows owners and executives in other industries to recover health insurance costs in rates.⁴⁰³
- 226 In cross-answering testimony, Staff witness Young asserts that “PMSA’s view matches that of Staff” for pilot health insurance expenses.⁴⁰⁴
- 227 In cross-answering testimony, Captain Moore argues that Staff’s approach is inconsistent with Final Order 09 and that the Commission did not include a corresponding increase to the DNI as medical expenses were phased out.⁴⁰⁵ Captain Moore argues that PSP did not follow Commission workpaper requirements and that its pro forma adjustment is largely unsupported.⁴⁰⁶ Captain Moore submits that the total amount for pilot health insurance should be closer to \$1.64 million, because PSP’s pro forma adjustment is premised on a total of 56 pilots and the association does not currently have 56 pilots.⁴⁰⁷

³⁹⁸ Young, Exh. MY-1T at 24:4-7.

³⁹⁹ *Id.* at 24:7-8.

⁴⁰⁰ *Id.* at 32:14-33:3.

⁴⁰¹ *Id.* at 32:23-26.

⁴⁰² Burton, Exh. WTB-08T at 8:1-10.

⁴⁰³ *Id.*

⁴⁰⁴ Young, Exh. MY-11T at 8:19.

⁴⁰⁵ Moore, Exh. MM-63T at 14:21-15:2.

⁴⁰⁶ *Id.* at 16:22-17:2.

⁴⁰⁷ *Id.* at 17:3-10.

228 *Commission Determination.* The Commission declines to reverse its determination in Final Order 09. PSP member pilots act as independent contractors and should fully fund their health insurance expenses through DNI payments.

229 In Final Order 09, the Commission distinguished between PSP paying for health insurance benefits for its employees compared to member pilots. The Commission held:

We agree that PSP should be able to recover the cost of medical insurance for its employees, such as Seattle office staff and employees at the Port Angeles pilot station. PSP's member pilots, however, are not employees. Neither have the pilots formed a legal partnership. Although the pilots have an ownership interest in PSP, they have chosen to organize as independent contractors who act 'independently, for profit or loss' but share common services out of shared interest. It is fair, just, and reasonable for these independent contractors to transition to paying for medical coverage through their DNI rather than PSP paying that expense on the pilots' behalf from PSP's organizational operating expenses.⁴⁰⁸

230 The Commission required PSP to include only 50 percent of the value of pilot health insurance in year two of the rate plan and instructed that "[a]fter the two year rate plan, we expect PSP pilots to fully fund their medical insurance expenses from the compensation received through the DNI."⁴⁰⁹

231 In this case, we have substantial discretion to decide fair, just, reasonable, and sufficient rates and to decide the appropriate treatment of pilot health insurance expenses. We conclude, however, that Final Order 09 came to the correct decision on this issue and that PSP pilots should fully fund their health insurance expenses through DNI.

232 PSP witness Lough provides evidence that nine out of the 12 pilotage districts in the compensation study fund pilot health insurance in tariff rates.⁴¹⁰ Yet the compensation study represents only a portion of pilotage districts in the country.⁴¹¹ Even setting this issue aside, the pilots in two of the nine districts cited by Lough are public employees.⁴¹² Captain Moore also testifies that Los Angeles Harbor pilots are required to contribute to

⁴⁰⁸ Final Order 09 ¶ 253.

⁴⁰⁹ *Id.*

⁴¹⁰ Lough, Exh. DL-6.

⁴¹¹ *See* Moore, Exh. MM-1T at 189:4-20.

⁴¹² *See id.* (indicating that both the Grays Harbor and Los Angeles Harbor pilots contribute to public employee retirement systems).

their medical expenses at a rate of 4 percent of their income.⁴¹³ PSP does not directly respond to Captain Moore on this point. We are not persuaded on the basis of this testimony that pilot health insurance benefits should be funded in tariff rates, contrary to the normal expectations around compensation for independent contractors.

233 PSP also provides testimony from Chief Mate Alysia Johnson. However, Chief Mate Johnson receives paid medical benefits as a union-represented officer for the company Subcom.⁴¹⁴ This is not a comparable situation.

234 As noted above, PSP witness Burton argues broadly that public service companies fund health insurance for their owners and executives.⁴¹⁵ But there are distinguishing circumstances in this case. Citing PSP's own bylaws, the Commission observed in Final Order 09 that PSP pilots "have chosen to organize as independent contractors who act 'independently, for profit or loss.'"⁴¹⁶ The Commission also found in Final Order 09 that PSP was an association of professionals where the association distributed nearly all its income to member pilots.⁴¹⁷ Although pilots are required to make an equity "buy in," PSP is not a capital-intensive organization.⁴¹⁸ For these reasons, PSP's organizational structure cannot be equated with other public service companies subject to Commission regulation.

235 We are not persuaded by Staff's position on the funding of pilot health insurance expenses, either. Staff departs from Final Order 09 by recommending that the organization's revenue requirement include \$1.89 million for pilot health insurance expenses.⁴¹⁹ Whether this amount is included as an organizational expense or part of TDNI is immaterial. Staff proposes that the costs of pilot health insurance are fully recovered in rates, but it does not provide any testimony explaining why the Commission should reverse its earlier decision in Final Order 09.

⁴¹³ Moore, Exh. MM-1T at 194:24-195:1.

⁴¹⁴ Johnson, Exh. AJ-1T at 7:1-7.

⁴¹⁵ *E.g.*, Burton, Exh. WTB-8T at 8:1-10.

⁴¹⁶ Final Order 09 ¶ 253.

⁴¹⁷ *Id.* ¶ 63.

⁴¹⁸ *Id.*

⁴¹⁹ *See* Young, Exh. MY-1T at 24:4-7; Young, Exh. MM-9 (adding \$1.89 million to TDNI).

236 We conclude that pilots should be required to fund their health insurance expenses from DNI payments. Pilot health insurance expenses should not be added as an element to PSP's revenue requirement or as a consideration of establishing TDNI.

5. Automatic Tariff Adjusters

237 PSP's President, Captain Carlson, proposes five automatic tariff adjusters to better match tariff revenues with actual pilotage system costs and to reduce the frequency of general rate cases.⁴²⁰ Captain Carlson argues that automatic tariff adjusters will minimize the need for contested rate cases, streamline rate case proceedings, and facilitate a working relationship between the industry and pilot group, which often leads to negotiated settlements.⁴²¹ The proposed automatic adjusters include:

- *Annual Traffic Adjuster*: A quarterly traffic/tonnage adjuster that automatically adjusts the tariff on a quarterly basis using a trailing 12-month data set to true up revenue collections to the revenue requirement assumptions in Final Order 09;
- *Quarterly New Licensee/Retiree Adjuster*: A quarterly adjuster that automatically increases or decreases the tariff based upon the cost of either a new licensee or a retirement;
- *Annual Cost-of-Living Adjuster*: An annual COLA that automatically adjusts the tariff on September 1 of each year based upon the Consumer Price Index for All Urban Consumers in the Seattle-Tacoma-Bellevue area for the year ended June 30 issued by the U.S. Department of Labor on an annual basis;
- *Annual Pay-As-You-Go Pension Adjuster*: An annual tonnage-based automatic adjuster designed to collect in a given calendar year the amount necessary to fund the annual cost of pay-as-you-go pension benefits paid to PSP retirees (and to fund the pay-as-you-go pension credits earned by current

⁴²⁰ Carlson, Exh. IC-1T at 3:22-23; *see also* Carlson, Exh. IC-1T at 4:1-2. Originally PSP proposed seven automatic tariff adjusters. In rebuttal, PSP withdrew its request for two of the automatic tariff adjusters previously requested: (1) Periodic Pilot Station/Pilot Boat Capital Cost Adjuster; and (2) Annual Pilot Station/Pilot Boat Expense Adjuster. Carlson, Exh. IC-8T at 18:17-19.

⁴²¹ Titone, MJT-01T at 3:9-14.

working pilots prior to a funded pension plan transition, if that option is selected by the Commission); and

- *Annual Funded Pension Adjuster*: An annual tonnage-based automatic adjuster designed to collect in a given calendar year the amount necessary to fund the transition to a fully-funded defined benefit pension plan for PSP based on the option selected by the Commission in this rate proceeding.⁴²²

238 In direct testimony, Captain Carlson also proposes automatic quarterly adjusters for pilot station and pilot boat expenses and related capital investments.⁴²³

239 PSP also provides testimony from Clayton L. Diamond, Executive Director and General Counsel of the American Pilots Association. Diamond testifies that a number of pilotage rate setting authorities include automatic inflation adjusters or COLAs to avoid the need for frequent rate cases.⁴²⁴

240 In response testimony, Staff witness Young asserts that the legislative intent was to allow for tariff adjustments that would avoid a full adjudication “for every change, no matter how slight.”⁴²⁵ However, Young raises concerns with the automatic adjusters proposed in this case.

241 Young first recommends rejecting the proposed Annual Traffic Adjuster.⁴²⁶ Young argues that adjusting rates based on the number of ship movements, without adjusting for variations in ship tonnage, may not account for accurate revenue deficiency or sufficiency.⁴²⁷ He also argues that the tariff adjuster subverts bedrock principles of ratemaking.⁴²⁸ A revenue requirement is not a guarantee of earnings, but if it were, the Commission would implement an automatic adjustment for every company it

⁴²² Carlson, Exh. IC-1T at 30:22-31:13.

⁴²³ *Id.* at 31:13-18.

⁴²⁴ Diamond, Exh. CLD-1T at 41:2-6.

⁴²⁵ Young, Exh. MY-1T at 10:5-6.

⁴²⁶ *Id.* at 12:16.

⁴²⁷ *Id.* at 11:10-12.

⁴²⁸ *Id.* at 12:2-3.

regulates.⁴²⁹ Young suggests that the adjuster amounts to retroactive rate making that is counter to Commission policy and practice.⁴³⁰

- 242 Young also recommends rejecting the Quarterly New Licensee/Retiree Adjuster, raising three main concerns.⁴³¹ Young argues that recalculating TDNI without considering other changes in revenue or expenses conflicts with the ratemaking matching principle.⁴³² Second, he argues that customers should be indifferent to whether PSP adds or subtracts licensed pilots and the assigning of responsibilities for ship movement services.⁴³³ Lastly, Young argues that the adjuster creates the appearance of a “fixed” per-pilot revenue requirement when it should be based on the cost of providing pilotage services.⁴³⁴
- 243 Unlike the other proposed adjusters, Young does not oppose PSP’s proposed COLA and believes that it meets the definition of “automatic” because it is based on a known and measurable index that is widely accepted for economic use.⁴³⁵
- 244 Young opposes both the fourth and fifth proposed adjusters, the Annual Pay-As-You-Go Pension Adjuster, and the Annual Funded Pension Adjuster. Young argues that the Commission directed PSP and PMSA to develop a new defined benefit pension plan, and he does not think it would be appropriate to include any adjusters until that directive has been met.⁴³⁶
- 245 PMSA opposes all of PSP’s proposed automatic adjusters.⁴³⁷ Captain Moore argues that PSP’s explanation of these adjusters is deficient and that, if allowed to go into effect, they would replace the ratemaking methodology already adopted by the Commission.⁴³⁸ Without a comprehensive explanation of the motives behind the tariff adjusters, PMSA raises several specific concerns.

⁴²⁹ *Id.* at 12:3-5.

⁴³⁰ *Id.* at 12:11-12.

⁴³¹ *Id.* at 14:15.

⁴³² *Id.* at 13:14-18.

⁴³³ *Id.* at 13:21-22; *see also* Young, Exh. MY-1T at 14:1-5.

⁴³⁴ *Id.* at 14:8-11.

⁴³⁵ *Id.* at 15:5-8.

⁴³⁶ *Id.* at 16:13-15.

⁴³⁷ Moore, Exh. MM-1T at 201:12.

⁴³⁸ *Id.* at 201:19-22.

- 246 First, Captain Moore maintains that PSP's proposed automatic adjusters remove several rate-setting functions away from the Commission and give them back to the BPC.⁴³⁹ Captain Moore avers that the legislature appropriately ended the mingling of economic regulation with safety and licensing regulation by transferring rate-setting authority to the Commission.⁴⁴⁰
- 247 Second, Captain Moore argues that the combination of these proposed tariff adjusters would allow PSP to remain outside of Commission oversight and unaccountable not just with future general rate case filings, but with any filings.⁴⁴¹
- 248 Third, Captain Moore argues that the language in the proposed tariff adjusters is unclear, vague, and empowers PSP to publish its own off-tariff publications, which would result in inconsistent payments.⁴⁴²
- 249 Fourth, Captain Moore claims that these proposed tariff adjusters have no sunset dates, wind-downs, off-ramps, or limits on their application.⁴⁴³ Moore contends that such open-ended authority may allow adjusters that are burdensome and speculative in nature.⁴⁴⁴
- 250 Fifth, Captain Moore argues that the proposed automatic adjusters will exceed the three percent threshold in Commission rule for initiating a general rate case.⁴⁴⁵ PMSA argues that the number of proposed tariff adjusters will cause conflict due to their effective dates occurring quarterly and alternating annual schedules, which may block future tariff filings.⁴⁴⁶
- 251 PMSA then responds to PSP's automatic Annual Traffic Adjuster. Captain Moore opposes this proposed adjuster, arguing that it would go against the Commission's incentive principle by proposing more revenue for less work and less revenue for more

⁴³⁹ Moore, Exh. MM-1T at 203:18-20.

⁴⁴⁰ *Id.* at 204:2-5.

⁴⁴¹ *Id.* at 204:9-11.

⁴⁴² *Id.* at 204:24-26; *see also* Moore, Exh. MM-1T at 205:1-5.

⁴⁴³ *Id.* at 205:18-19.

⁴⁴⁴ *Id.* at 205:18-21.

⁴⁴⁵ *Id.* at 205:22-25 (citing WAC 480-07-505(1)(a)).

⁴⁴⁶ *Id.* at 206:11-14.

work.⁴⁴⁷ Captain Moore also argues that the proposed Annual Traffic Adjuster would undermine efficiency incentives created by Final Order 09's rate-setting formula.⁴⁴⁸

- 252 Captain Moore likewise opposes PSP's proposed Quarterly New Licensee/Retiree Adjuster. Captain Moore argues that this tariff adjuster replaces long-term efficiency with short-term incentives at the risk of long-term AAL decreases.⁴⁴⁹ Further, this proposed tariff adjuster invites gamesmanship in timing by allowing quarterly adjusted surcharges that incentivize pilot trainees to become certified toward the latter parts of the month and maximize revenues for existing pilots in the prior quarter.⁴⁵⁰
- 253 Captain Moore disagrees with Staff's recommendation to approve PSP's proposed COLA, arguing that the tariff adjuster would lead to DNI increases higher than cost of living and "would automatically and every year apply a cost-of-living increase to virtually all the key revenue-generating tariff items."⁴⁵¹ Captain Moore observes that PSP's revenues are not based on a normal basket of goods and that pilots are high income earners that do not need a subsistence COLA to be made whole.⁴⁵² According to Captain Moore, this tariff adjuster would either remove incentives for PSP to manage expenses or result in potential windfalls for PSP in future years.⁴⁵³ Captain Moore would potentially support a proposal for a COLA limited to only certain expense items, but not to all expenses.⁴⁵⁴
- 254 Like Staff, Captain Moore opposes the Annual Pay-As-You-Go Pension and the Annual Funded Pension, respectively.⁴⁵⁵ Captain Moore argues that PSP seeks to transfer all of its retirement costs onto ratepayers and that it provides no incentive to control costs.⁴⁵⁶ He argues that the Annual Pay-As-You-Go Pension Adjuster imposes past costs on future

⁴⁴⁷ *Id.* at 207:7-9.

⁴⁴⁸ *Id.* at 208:13-15.

⁴⁴⁹ *Id.* at 209:24-26; *see also* Moore, Exh. MM-1T at 210:1.

⁴⁵⁰ *Id.* at 210:16-22.

⁴⁵¹ *Id.* at 211:14-15. *Accord* Moore, Exh. MM-63T at 21:16-22:11.

⁴⁵² Moore, Exh. MM-63T at 22:5-8.

⁴⁵³ Moore, Exh. MM-1T at 211:24-26; *see also* Moore, Exh. MM-1T at 212:1-8.

⁴⁵⁴ *Id.* at 21:22-26; *see also* Moore, Exh. MM-63T at 21:22-26; *see also* Moore, Exh. MM-63T at 22:1.

⁴⁵⁵ *Id.* at 219:23-220:5.

⁴⁵⁶ *Id.*

ratepayers.⁴⁵⁷ Captain Moore argues that the proposed Annual Funded Pension Adjuster imposes a “monstrous new cost” on ratepayers without requirements for pilot contributions or incentives to control expenses.⁴⁵⁸

255 On rebuttal, Captain Carlson withdraws his request for two of the proposed automatic adjusters: the periodic pilot station/pilot boat capital cost adjuster and the annual pilot station/pilot boat expense adjuster.⁴⁵⁹ Captain Carlson otherwise defends PSP’s proposed automatic adjusters. For instance, he argues that the proposed adjuster for new licensees and retirees places the determination of the number of funded pilots with the BPC, where it should properly reside.⁴⁶⁰ Captain Carlson also disputes PMSA’s claim that increases in vessel size necessarily drive increases in DNI, arguing that this may be true under the old tariff but that it is not true under the new tariff.⁴⁶¹

256 PSP also provides testimony from Michael Titone, the Financial and Regulatory Affairs Manager for the Columbia River Bar Pilots. Titone argues that use of annual pilotage COLA tariff adjusters are common throughout the United States.⁴⁶² Captain Carlson proposes that the COLA be effective on January 1 of each year based upon the Consumer Price Index for the Seattle/Bellevue area for the 12 months ending September 30 of the prior year.⁴⁶³ This adjuster, he says, is relatively simple and only requires the Commission to decide whether the adjuster should apply to all or only certain tariff components.⁴⁶⁴

257 In its Brief, PSP argues that the use of automatic tariff adjusters was cited as a “best practice” in the Washington State Pilotage Final Report and Recommendations.⁴⁶⁵ PSP argues that automatic tariff adjusters allowed for adjustments of the pilotage tariff between 2001 and 2006 based on agreements between PSP and shippers.⁴⁶⁶

⁴⁵⁷ *Id.* at 220:18-25.

⁴⁵⁸ *Id.* at 221:1-8.

⁴⁵⁹ Carlson, Exh. IC-8T at 18:18-19.

⁴⁶⁰ *Id.* at 21:2-6.

⁴⁶¹ *Id.* at 22:18-21.

⁴⁶² Titone, MJT-1T at 6:20:21.

⁴⁶³ *Id.* at 6:21-23.

⁴⁶⁴ *Id.* at 6:23-25.

⁴⁶⁵ PSP Brief ¶ 95 (citing Royer, Exh. JR-23 at 73).

⁴⁶⁶ *See id.* ¶ 96.

- 258 PSP argues that the proposed Quarterly New Licensee/Retiree Adjuster is particularly important given the division of jurisdiction between the Commission and the BPC, noting that “both the UTC and BPC should approach certain aspects of their decision-making with an eye toward how a particular decision impacts a sister agency.”⁴⁶⁷
- 259 Staff argues that administrative efficiency should not justify automatic adjusters that subvert ratemaking principles.⁴⁶⁸
- 260 *Commission Determination.* We decline to approve any automatic tariff adjusters in this Order. Pursuant to RCW 81.116.030(2)(c), if the petitioner proposes a tariff with “an annual or periodic adjustment mechanism,” the petitioner must include “information justifying such a mechanism.” We address each proposed adjuster in turn.
- 261 With regard to the Annual Traffic Adjuster, we are concerned that this adjuster undermines incentives for efficiency. As the Commission has previously observed, “The fundamental economic goal of regulation is straightforward: to mimic a competitive market outcome, even when the underlying market is not competitive.”⁴⁶⁹ The use of a modified historical test year and rates based on projected vessel assignments are in alignment with this same, fundamental goal.
- 262 Captain Moore observes, “As currently built, the number of pilots factored in TDNI is built around the creation of a positive feedback loop for efficiency as applied against projected annual traffic.”⁴⁷⁰ By setting rates based on projected vessel traffic, the tariff rewards pilots for accepting more assignments in years with high vessel traffic and encourages cost-saving steps in years with less vessel traffic, mimicking a competitive market outcome. However, automatically adjusting rates based on annual vessel traffic tends to undermine incentives to use resources in a more efficient manner.⁴⁷¹
- 263 We also share Staff’s concern that adjusting rates based on the number of ship movements, without adjusting for variations in ship tonnage, may not accurately account

⁴⁶⁷ *Id.* ¶ 103.

⁴⁶⁸ Staff Brief ¶ 70.

⁴⁶⁹ Final Order 09 ¶ 39 (internal citation and quotation omitted).

⁴⁷⁰ Moore, Exh. MM-1T at 208:13-15.

⁴⁷¹ *See id.* at 208:17-22.

for revenue deficiency or sufficiency.⁴⁷² The tonnage charge remains the primary element in PSP's tariff and changes in vessel tonnage are a material issue.

264 We decline to adopt the proposed Quarterly New Licensee/Retiree Adjuster. As an initial matter, it is not clear how PSP envisions this adjuster working alongside its proposal to fund 56 pilots during the rate year. PSP does not provide any revenue forecasts showing the impacts of these proposed adjusters.⁴⁷³ Ostensibly rates would be set on either a hypothetical number of 56 pilots, as PSP requests,⁴⁷⁴ or rates would be set on the actual number of working pilots, which is currently lower.⁴⁷⁵ Adopting the proposed adjuster could in fact provide PSP with lower revenues than what we have authorized in this Order. It is difficult to forecast how the addition of new, licensed pilots may be offset by retirements, and PSP pilots would not receive a "premium" for the additional work they are performing, as we have done in this Order by funding 56 pilots in rates.

265 We are also concerned that, much like the proposed Annual Tariff Adjuster, the Quarterly New Licensee/Retiree Adjuster would tend to conflict with the revenue requirement formula established by Final Order 09 and its resulting incentives.⁴⁷⁶ Basing the number of funded pilots on a rolling average of historical assignment levels is consistent with our hybrid test year approach to ratemaking that we apply to utilities and other industries.⁴⁷⁷

266 By contrast, adopting the Quarterly New Licensee/Retiree Adjuster would remove longer-term incentives for efficiency and replace them with short-term incentives that may, over time, lead to decreases in DNI.⁴⁷⁸ If the Commission maintained the AAL methodology for determining the number of funded pilots, PSP's short-term incentive to gain revenue through adding additional licensed pilots could potentially suppress AAL

⁴⁷² Young, Exh. MY-1T at 11:10-12.

⁴⁷³ Moore, Exh. MM-53 (indicating that PSP does not provide revenue projections for any of the proposed adjusters).

⁴⁷⁴ *E.g.*, Response to Bench Request No. 1, Attachment 1, line 8.

⁴⁷⁵ Carlson, Exh. IC-1T at 15:11-14. *See also* Carlson, Exh. IC-8Tr at 4:7-9 ("Although the Pilot Commission has been working to license trainees as fast as possible, the State is still not at its authorized level of 56 licensed pilots.").

⁴⁷⁶ *See* Final Order 09 ¶ 93 (adopting an AAL methodology for determining the number of funded pilots).

⁴⁷⁷ *See Wash. Utils. & Transp. Comm'n v. Pacific Power & Light Co.*, Docket UE-140762, Order 08, 3, ¶ 8 (March 25, 2015).

⁴⁷⁸ *See* Moore, Exh. MM-1T at 209:24-210:1.

and therefore DNI.⁴⁷⁹ If the Commission did not continue the AAL methodology and instead tied the number of funded pilots strictly to the licensing of new pilots and retirement of member pilots, then this would remove opportunities to encourage prudent management through rate-setting.⁴⁸⁰

267 PSP argues that a significant safety-based rationale supports the Quarterly New Licensee/Retiree Adjuster, citing the testimony of its expert Dr. Czeisler.⁴⁸¹ This is not persuasive. In Section C.2 of this Order, we found that the tariff should fund 56 pilots based on a modification of the AAL methodology. This is already the maximum number of pilots authorized by the BPC, and any further increases are speculative. There is no logical reason to believe that the Quarterly New Licensee/Retiree Adjuster would have an impact on safety when we are already funding 56 pilots in tariff rates.

268 We are also concerned that recalculating TDNI without considering other changes in revenue or expenses conflicts with the ratemaking matching principle.⁴⁸² This issue should have been thoroughly addressed in PSP's direct testimony. As the record stands, Young argues that PSP did not properly account for other possible changes in revenue or expenses,⁴⁸³ and Captain Moore similarly argues that PSP's testimony is "particularly deficient with respect to the explanation of these adjusters."⁴⁸⁴ We agree.

269 Turning to the Annual COLA adjuster, we agree with PMSA that it would be unreasonable to apply a COLA increase to all tariff charges. DNI is already subject to inflation adjustments, and other items such as the number of funded pilots should not be subject to such an adjustment.⁴⁸⁵ We share PMSA's concern that broadly applying a COLA to tariff charges could ensure such significant revenue increases over the

⁴⁷⁹ *See id.*

⁴⁸⁰ *See* Final Order 09 ¶ 38 ("Rate-setting principles seek to encourage prudent decisions rather than dictate them.").

⁴⁸¹ PSP Brief ¶ 102.

⁴⁸² *Cf. WUTC v. Cascade Natural Gas Corp.*, Docket UG-200568 Final Order 05 ¶ 207 (May 18, 2021) ("We have rejected pro forma adjustments for wage increases when there is insufficient evidence that the utility has accounted for offsetting factors.") (internal citation omitted).

⁴⁸³ Young, Exh. MY-1T at 13:14-18.

⁴⁸⁴ Moore, Exh. MM-1T at 201:19-20.

⁴⁸⁵ Moore, Exh. MM-63T at 21:16-26.

following years that it may remove incentives for PSP to manage expenses or result in potential windfalls.⁴⁸⁶

270 To the extent that we agree with an inflation adjustment for DNI, we have already applied such an inflation adjustment to DNI in Section C.1, above, and therefore do not adopt the proposed COLA Adjuster. As a general matter the Commission stated in Final Order 09 that it agreed “with PMSA that PSP, Staff, and other stakeholders should conduct a Staff-led technical workshop to address rate of return methodology.”⁴⁸⁷ Tariff adjusters should be evaluated within the context of a fully-established ratemaking methodology and it is the Commission’s preference that this process be initiated, and it should be collaborative and inclusive.

271 Given our findings regarding PSP’s retirement plan, we do not adopt the Annual Pay-As-You-Go Pension Adjuster or the Annual Funded Pension Adjuster. In Section C.3 above, we instructed PSP to seek favorable determinations from the IRS and Department of Labor before bringing its retirement plan proposal back to the Commission for consideration.

272 For the reasons stated above, we decline to adopt the proposed automatic adjusters. The Commission may choose to revisit these findings in the future if PSP provides more detailed support for proposed automatic adjusters in its direct testimony after it has participated in a Staff-led technical workshop to provide the Commission with an agreed upon rate-making methodology.⁴⁸⁸

6. Legal fees

273 PSP witness Burton proposes several adjustments to the association’s legal fees. He proposes a pro forma adjustment of \$40,672 to test year expenses reflecting the amortization of \$122,016 in rate-case specific expenses incurred in 2021.⁴⁸⁹ In a separate account, Burton also proposes a pro forma adjustment of \$594,472 reflecting the

⁴⁸⁶ Moore, Exh. MM-1T at 211:24-26; *see also* Moore, Exh. MM-1T at 212:1-8.

⁴⁸⁷ *See* Final Order 09 ¶ 390.

⁴⁸⁸ *See* Young, Exh. MY-1T at 5:3-5 (“[D]espite two rounds of testimony, the Pilots have presented almost nothing in the way of evidentiary support for the automatic tariff adjustments PSP seeks to include in its tariff.”).

⁴⁸⁹ Burton, Exh. WTB-5r (“Amort of UTC Exp” Tab, adjustment P-1).

amortization of a total of \$1,783,415 in 2022 and 2023 for general rate-case specific expenses over a three-year period.⁴⁹⁰

274 Burton also proposes a restating adjustment of \$187,058 to test year expenses, which reflects the amortization of \$130,941 for intermediate legal expenses and \$56,118 for foundational legal expenses attributable to PSP's last rate case.⁴⁹¹ Pursuant to Final Order 09, intermediate legal expenses are amortized over a three-year period, and foundational legal expenses are amortized over a seven-year period.⁴⁹² Burton also proposes a restating adjustment to remove a double payment to a vendor and to remove Commission-specific expenses incurred during the test year.⁴⁹³

275 In response testimony, Staff witness Jaclynn Simmons recommends that PSP should be authorized to recover \$426,482 in annual legal fees.⁴⁹⁴ Simmons recommends restating adjustments removing a total of \$75,214 from test year costs and pro forma adjustments adding a total of \$39,119.⁴⁹⁵ Simmons argues that PSP overstates total legal expenses because current rates already include the 2023 amortized portion of legal fees approved in PSP's last general rate case.⁴⁹⁶

276 Captain Moore expresses concern with the "rapid escalation of 'general' attorney's fees," and questions whether PSP is prudently managing these expenses.⁴⁹⁷ These general legal expenses are increasing an average rate of 55 percent per year.⁴⁹⁸ Captain Moore argues that the 2018 shift in rate-setting responsibility should not have resulted in higher expenses in "general legal" expenses, and he argues that "there is no transparency in this accounting."⁴⁹⁹ Captain Moore notes that PSP continues to have legal counsel attend regular BPC meetings, and he argues that PSP is "hiring attorneys to do work that does

⁴⁹⁰ Burton, Exh. WTB-5r ("Rate-Case Exp" Tab, adjustment P-17). The account referenced here is titled "Rate Case Specific Expenses TP-220513."

⁴⁹¹ Burton, Exh. WTB-4Tr at 5:12-16 (discussing adjustment R-2).

⁴⁹² *Id.* at 5:6-11.

⁴⁹³ *Id.* at 5:21-25.

⁴⁹⁴ Simmons, Exh. JNS-2r at 2, line 16, column (f).

⁴⁹⁵ *Id.* at 2, line 16, columns (c), (e).

⁴⁹⁶ Simmons, Exh. JNS-1T at 13:20-14:3.

⁴⁹⁷ Moore, Exh. MM-1T at 44:3-10.

⁴⁹⁸ Moore, Exh. MM-12.

⁴⁹⁹ Moore, Exh. MM-1T at 45:3-12; Exh. MM-13.

not necessarily require an attorney in the first place.”⁵⁰⁰ Captain Moore also indicates that PSP may be including time spent preparing the present rate case as general legal expenses.⁵⁰¹ PMSA therefore recommends only allowing necessary general legal expenses in rates.⁵⁰²

277 Captain Moore supports continued amortization of the legal expenses from PSP’s last rate case and establishing amortization schedules for the fees incurred in this case.⁵⁰³ To the extent that PSP seeks to relitigate issues decided in the first general rate case, Captain Moore argues these costs should be disallowed, noting that the Commission allowed amortization of these “foundational” legal expenses over seven years.⁵⁰⁴

278 In rebuttal testimony, Burton agrees with the theory of Simmons’s proposed adjustments R-11 and P-3, but he argues that Simmons calculated the amounts at issue incorrectly.⁵⁰⁵ He maintains that the Commission should accept PSP’s adjustments to legal fees as proposed.⁵⁰⁶

279 Burton also does not agree that PSP overstated the amount of prior rate case legal fees that should be amortized and recovered during the rate year.⁵⁰⁷ He does not agree with Simmons’s claim that rates are currently set to recover 2023’s portion of the amortization.⁵⁰⁸

280 In its Brief, PMSA argues that PSP’s total legal fees have increased by more than 350 percent since 2016 and that the Commission should limit recovery of these excessive expenses.⁵⁰⁹ PMSA argues that PSP did not respond to Captain Moore’s testimony that PSP sought to re-litigate foundational issues from the first general rate case,⁵¹⁰ that PSP

⁵⁰⁰ *Id.* at 48:9-49:12.

⁵⁰¹ *Id.* at 49:19-50:9.

⁵⁰² Moore, Exh. MM-1T at 50:13-19.

⁵⁰³ *Id.* at 51:2-6.

⁵⁰⁴ *Id.* at 51:20-52:13; Moore, Exh. MM-15.

⁵⁰⁵ Burton, Exh. WTB-08T at 19:22-20:18. *See also* Burton, Exh. WTB-11 (Corrected Legal Exp calcs).

⁵⁰⁶ *Id.* at 20:16-18.

⁵⁰⁷ *Id.* at 21: 8-9.

⁵⁰⁸ *Id.* at 22:9-10.

⁵⁰⁹ PMSA Brief ¶¶ 65-67.

⁵¹⁰ *Id.* ¶ 68-69.

spent unreasonable sums on expert testimony that only repackaged evidence provided by counsel,⁵¹¹ and that PSP unreasonably incurred costs by flying in experts to testify at the virtual evidentiary hearing.⁵¹²

281 *Commission Determination.* We agree with PSP's proposed adjustments for general rate case legal expenses. General rate case legal expenses are properly recoverable, and it is reasonable to amortize expenses from the present case over a three-year period, much as the Commission determined in Final Order 09.⁵¹³ Burton persuasively explains that Staff miscalculated the amounts at issue, and he provides corrected figures in Exhibit WTB-11. Though we share PMSA's concerns that PSP may have incurred excessive costs by re-litigating issues decided in Final Order 09, paying for expert witness travel for a virtual hearing, and other actions, we decline to limit PSP's recovery of rate case expenses at this time. This proceeding represents PSP's second general rate case before the Commission, and we are hesitant to limit rate case legal fees in the context of a relatively novel proceeding.

282 The Commission similarly agrees with PSP's proposals to continue amortizing the expenses from its first general rate case. Burton addresses this issue in Exhibit WTB-12. The Commission clarifies, however, that PSP's proposal would result in over-recovery of the intermediate legal expenses set for a three year amortization period in its last general rate case, which was set to recover \$130,941 per year. Recovery of these expenses began on the effective date of PSP's current tariff, January 25, 2021, with the first year of this amortization being fully recovered one year later, in January 2022. Similarly, these costs are not considered fully recovered until January 2024. Given the date of the issuance of this Order, some recognition of the remaining amortization balance is necessary, as there are approximately five months of recovery remaining for this portion of the amortized legal expenses. The Commission therefore limits recovery of this portion of PSP's proposed adjustment to reflect this partial year remaining in the amortization period, reducing PSP's proposed adjustment to reflect this remaining balance of approximately \$55,000. Also, because this expense will be embedded in rates beyond the rate year, the Commission finds it appropriate to amortize this expense over two years, reflecting PSP's historical rate case filing interval. In total, this adjustment reduces PSP's proposed restating adjustment (R-02) of \$187,058 to \$83,397.

⁵¹¹ *Id.* ¶ 70.

⁵¹² *Id.* ¶ 72.

⁵¹³ Final Order 09 ¶ 284.

- 283 We are concerned, however, with the rapid increase in PSP’s “general” legal expenses. In Final Order 09, the Commission observed that “PSP’s general legal fees have rapidly increased in recent years” and placed PSP on notice that the Commission “may limit recovery of excessive legal or expert witness fees when the evidence establishes that certain expenses are unreasonable or unnecessary.”⁵¹⁴ The Commission allowed PSP to recover general legal expenses but shared PMSA’s concern that PSP increasingly relied on lawyers to represent it at BPC meetings and to respond to non-legal issues.⁵¹⁵
- 284 It is notable in this case that PSP’s general legal fees have continued to increase. PSP requests \$335,903 in general legal fees in the present case.⁵¹⁶ This represents an increase from the \$283,382 that the Commission found concerning in Final Order 09, and a significant escalation compared to general attorney fees in earlier years.⁵¹⁷
- 285 There appears to be little justification in the record for these continued increases. PSP provided heavily redacted invoices in response to PMSA data requests, which do not provide any insight into the issues being addressed by its attorneys or the reasonableness of those hours.⁵¹⁸ PSP did not respond, either, to Captain Moore’s testimony that PSP continues to have legal counsel attend regular BPC meetings and perform work that does not necessarily require an attorney.⁵¹⁹
- 286 Pursuant to RCW 81.116.030(5), PSP bears the burden of proof to establish that its current rates are not fair, just, reasonable, and sufficient. The Commission has alerted PSP to its concern with this category of rapidly escalating costs, and PSP has provided little evidence to establish that these are reasonable, necessary expenses. Tariff rates already support one administrative pilot and a non-pilot executive director. The association is not entitled to recover increasing legal costs without providing any justification or evidence supporting their reasonableness. We therefore conclude that PSP has failed to meet its burden, and we disallow PSP’s request for recovery of \$335,903 in general legal fees.

⁵¹⁴ *Id.* ¶ 287 (citing *Petition of Puget Sound Power and Light Company for an Order regarding the Accounting Treatment of Residential Exchange Benefits*, Docket UE-920433 (consolidated) Eleventh Supplemental Order (September 21, 1993)).

⁵¹⁵ *Id.*

⁵¹⁶ Moore, Exh. MM-12. *Accord* Burton, Exh. WTB-5r (“Legal Exp” tab).

⁵¹⁷ *See id.*

⁵¹⁸ Moore, Exh. MM-13 (PSP Response to Staff DR 45 c-3).

⁵¹⁹ *See* Moore, Exh. MM-1T at 48:9-49:12.

7. Consultant expenses

- 287 PSP's test year consulting expenses totaled \$212,347, before adjustments.⁵²⁰ PSP witness Burton proposes a restating adjustment to continue amortizing consulting expenses incurred in connection with the association's first general rate case⁵²¹ Burton also proposes removal of rate case-specific consulting expenses incurred in the test year, to be amortized over three years.⁵²²
- 288 In response testimony, Staff witness Young recommends removing \$64,072 paid to Walt Tabler Consulting and \$53,625 paid to RedCloud Consulting during the test year.⁵²³ Young argues that Tabler Consulting was contracted to help implement the Commission's directive in Order 09, which is not a normal and recurring expense.⁵²⁴ This expense also reflects work performed by the executive director, a position already funded through rates.⁵²⁵ Young argues that RedCloud's services were not completed and that they were not normal test year expenses.⁵²⁶
- 289 Young proposes including the consulting costs that were approved for amortization and recovery over seven years from the last rate case.⁵²⁷ However, consistent with its legal fee recommendation, Staff argues to exclude the costs set for recovery over three years because these are already being recovered in current rates.⁵²⁸
- 290 Captain Moore recommends removing Tabler and RedCloud consulting expenses.⁵²⁹ Captain Moore argues further that the Commission should disallow consultant expenses attributable to re-litigating findings from Final Order 09.⁵³⁰

⁵²⁰ See Burton, Exh. WTB-5r ("Results of Operations").

⁵²¹ See Burton, Exh. WTB-5r ("190976 Amort Legal & Cons"), See also PSP adjustment R03.

⁵²² See PSP Response to Commission Bench Requests, Attachment 1 ("Restating Entries," adjustment R-06 and "Pro Forma Entries", adjustment P-02).

⁵²³ Young, Exh. MY-1T at 25:9-10. See also *id.* at 24:16-17.

⁵²⁴ *Id.* at 25:13-14.

⁵²⁵ *Id.* at 25:15-17.

⁵²⁶ Young, Exh. MY-1T at 25:20-22.

⁵²⁷ Simmons, Exh. JNS-1T at 15:1-6.

⁵²⁸ *Id.* at 15:1-6.

⁵²⁹ Moore, Exh. MM-1T at 19:2-3.

⁵³⁰ *Id.* at 51-52:20-3; Exh. MM-15.

- 291 In rebuttal testimony, Burton disagrees with Staff’s recommendation to remove all Tabler Consulting fees and states that Walter S. Tabler previously served as PSP’s executive director.⁵³¹ Burton argues that the Tabler Consulting expenses should be included in the revenue requirement and recovered in rates. PSP claims it intends to continue to use Tabler Consulting going forward, despite having a new executive director. While PSP concedes that some of these expenses may have been incurred in relation to non-recurring issues, it contends that Tabler Consulting will continue to provide recurring services that are important to PSP’s continued success.⁵³²
- 292 Similarly, Burton disagrees with Staff’s recommendation to remove RedCloud Consulting expenses.⁵³³ Burton argues that the work performed by RedCloud Consulting “was suspended, not cancelled, and it continues to be used and useful.”⁵³⁴ These costs are appropriate for rate inclusion because they are necessary to comply with the Commission’s directive to further improve PSP’s efficiency.⁵³⁵ PSP suspended RedCloud Consulting’s work because it wanted to be sure that the work completed to date was consistent with the Commission’s direction.⁵³⁶ PSP intends to resume the integration and implementation of RedCloud’s services in 2023.⁵³⁷
- 293 Burton also disagrees with Staff’s proposal to exclude recovery of consulting costs currently being amortized over three years and already being recovered in current rates, similar to Staff’s proposed treatment of certain legal fees. Burton submits that PSP’s proposal, not Staff’s, would allow for full recovery of prior rate case consulting fees through new rates.⁵³⁸
- 294 In its Brief, PSP maintains that it acted reasonably in retaining Tabler and RedCloud and that it should be given the benefit of the doubt regarding the reasonableness of these expenses.⁵³⁹

⁵³¹ Burton, Exh. WTB-8T at 9:6 and Tabler, Exh. WST-1T at 1:4-5.

⁵³² *Id.* at 9:15-19.

⁵³³ *Id.* at 10:8.

⁵³⁴ *Id.* at 10:8-9.

⁵³⁵ *Id.* at 10:18-20.

⁵³⁶ *Id.* at 10:8-13.

⁵³⁷ *Id.* at 10:16-18

⁵³⁸ *Id.* at 26:10-11.

⁵³⁹ PSP Brief ¶ 122.

- 295 *Commission Determination.* We agree with Staff and PMSA that the Tabler and RedCloud consulting services are not yet completed and the expenses incurred are not representative of ongoing expenses.
- 296 While Burton submits that PSP intends to continue to work with Tabler in the future,⁵⁴⁰ PSP does not provide evidence of what these expenses will be going forward. The Commission does not base rates on mere estimates or budgets, and it certainly does not base rates on mere plans or intentions. And while Burton submits that RedCloud’s work product continues to be used and useful,⁵⁴¹ PSP has not provided any evidence to substantiate this assertion. Simmons notes that PSP provided redacted invoices that only showed the cost and dates.⁵⁴² These expenses are therefore denied. Accordingly, we also accept Staff’s adjustments removing the remaining rate case-specific consulting expenses from the test year and amortizing these costs over three years.⁵⁴³
- 297 The Commission accepts other consulting fees identified by PSP, which are not challenged by any party.⁵⁴⁴
- 298 The Commission next addresses the amortization of consultant expenses. In the first PSP rate case, consulting fees specific to preparing and completing the general rate case were allowed for recovery over two separate periods, much like the association’s legal expenses.⁵⁴⁵ Using the same reasoning we apply to the previously authorized amortization of legal fees, as discussed in Section 6 above, we accept Burton’s proposed amortization of consultant expenses as set forth in Exhibit WTB-12, with modification to the costs set for recovery over three years.⁵⁴⁶ The Commission limits recovery of this portion of PSP’s proposed adjustment to reflect the partial year remaining in the amortization period, reducing PSP’s proposed adjustment to reflect a remaining balance of approximately \$16,000. To limit over-recovery beyond the rate year, this amount is amortized over two years. The costs previously authorized for recovery over seven years

⁵⁴⁰ Tabler, Exh. WTB-8T at 9:10-18.

⁵⁴¹ *Id.* at 10:8-9.

⁵⁴² Simmons, Exh. JNS-10T at 7:1-6.

⁵⁴³ See Simmons, Exh. JNS-8, Staff adjustments R-10 and R-20.

⁵⁴⁴ See Tabler, Exh. WTB-5r (“Consulting Exp.”).

⁵⁴⁵ Final Order 09 ¶ 303

⁵⁴⁶ See Burton, Exh. WTB-12; See also Final Order 09, Attachment A, lines 51-52, authorizing amortization of UTC-Specific Consulting fees, \$39,263 (over three years) and \$16,827 (over seven years).

are allowed in full. In total, this adjustment reduces PSP's proposed restating adjustment (R-03) of \$56,089 to \$25,006.⁵⁴⁷

8. Organizational efficiency and ship delays

- 299 Captain Carlson testifies that PSP implemented several efficiency measures as of March 29, 2022, after the Commission noted concerns regarding the association's organizational efficiency.⁵⁴⁸ Of these, Captain Carlson submits that the most substantial efficiency gains will come from its implementation of "a rolling start" changeover day.⁵⁴⁹ PSP historically used a single changeover day, where half of the pilots go on watch while the other half go off watch.⁵⁵⁰ This new rolling start policy staggers PSP's on/off duty rotations and PSP expects this to reduce the need for callbacks by "as much as 40% in any given month."⁵⁵¹
- 300 Other efficiency measures include allowing pilots to take assignments immediately after a cancellation, allowing pilots to perform both a transit assignment and harbor shift assignment within the same day, and reducing the minimum preparation time for night assignments.⁵⁵² Captain Carlson notes that implementing these efficiency measures increased watch productivity per pilot by 5 percent when comparing 2022 productivity to 2019.⁵⁵³
- 301 In response testimony, Captain Moore testifies that during 2021 through 2022, ship delays and reliability issues have escalated dramatically.⁵⁵⁴ Captain Moore submits that in 2022, a significant increase occurred where vessels experienced 358 delays totaling 1,760 hours.⁵⁵⁵
- 302 Captain Moore argues that these delays cannot be explained by workload or staffing issues because the assignment levels and number of pilots during this period were nearly

⁵⁴⁷ *Id.*

⁵⁴⁸ Carlson, Exh. IC-1T at 11:18-20; Docket TP-190976, Order 09 ¶109.

⁵⁴⁹ *Id.* at 14:1-4.

⁵⁵⁰ *Id.* at 14:1-4.

⁵⁵¹ *Id.* at 14:5-13.

⁵⁵² *Id.* at 13:3-23.

⁵⁵³ Carlson, Exh. IC-8T at 14:1-4; Exh. IC-13.

⁵⁵⁴ Moore, Exh. MM-1T at 69:10-22.

⁵⁵⁵ *Id.* at 72:2-12; Exh. MM-19.

identical when compared to 2017.⁵⁵⁶ Captain Moore submits that “delays are not a function of the number of pilotage assets made available to PSP, but rather efficient management of their pilotage assets.”⁵⁵⁷ PSP’s new watch schedule adopted in 2022 has not improved the issue of delays, and Captain Moore questions whether the delays are a result of PSP scheduling pilots for duty an average of 177.65 days per year, which is 4.85 days short of the traditional half-on/half-off watch rotation PSP claims to follow.⁵⁵⁸ Captain Moore alleges that PSP is “externalizing the cost of their callback system to their customers through service delays and lower quality performance.”⁵⁵⁹ Because of the service reliability issues PMSA members have experienced, Captain Moore argues that it is imperative that the Commission maintain its commitment to the AAL methodology for determining the number of funded pilots.⁵⁶⁰

303 Captain Moore recommends the Commission implement two efficiency incentives. First, the Commission should adopt a cost-sharing mechanism like that used for electric utilities regulated by the Commission.⁵⁶¹ If pilots’ DNI is more than authorized due to efficiency improvements and operating expense cost control, then PSP could keep a percentage of the amount that exceeds its authorized DNI, “depending on hitting different levels of efficiency or cost-containment around a Commission-selected baseline.”⁵⁶²

304 Second, Captain Moore proposes that the Commission implement a service delay credit, as PSP’s “previously stellar 99.7% service rate” has dropped significantly in recent years in “an apparent effort to reduce internal callback liabilities.”⁵⁶³ Captain Moore proposes that the service delay credit equal \$1,119, at a minimum, which is PSP’s current credit per callback job.⁵⁶⁴ Captain Moore proposes that to calculate the total credit, the hours of

⁵⁵⁶ *Id.* at 71:14-72:20.

⁵⁵⁷ *Id.* at 74:1-4.

⁵⁵⁸ *Id.* at 75:13-17.

⁵⁵⁹ *Id.* at 83:4-6.

⁵⁶⁰ *Id.* at 84:6-19.

⁵⁶¹ *Id.* at 280:4-5.

⁵⁶² *Id.* at 280:18-23.

⁵⁶³ *Id.* at 281:13-19.

⁵⁶⁴ *Id.* at 282:5-6.

delay caused by PSP should be charged at the same hourly rate as PSP's current delay charge in Item 360 of its tariff.⁵⁶⁵

305 Captain Moore also proposes that PSP track productivity metrics to allow the
Commission and ratepayers to evaluate PSP's productivity over time.⁵⁶⁶ He recommends
the inclusion of the following metrics:

306 Per pilot total days of duty scheduled per month

307 Per pilot total days actually available for duty per month

308 Per pilot assignments completed on duty per month

309 Per pilot assignments completed off duty per month

310 Per pilot cumulative per year totals for each of the above

311 Total delays per month

312 Total pilots on duty on day of delay

313 Total pilots actually available for duty on day of delay

314 Total hours of delay per occurrence⁵⁶⁷

315 In rebuttal testimony, Captain Carlson argues that ship delays are the result of several factors, including pilot shortage.⁵⁶⁸ During the period of 2021-2022, "the pilot corps was six to seven pilots short of [the BPC] authorized number due to pilot training, fitness, and license issues."⁵⁶⁹ Captain Carlson also points to a recent regulation change in WAC 363-116-081, which occurred in early 2021, in which rest rules were modified to require a pilot to obtain 10 hours of rest following a cancelled assignment.⁵⁷⁰ This new rule required a mandatory rest period of 12 hours following three consecutive night

⁵⁶⁵ *Id.* at 282:8-11.

⁵⁶⁶ *Id.* at 283:23-26.

⁵⁶⁷ *Id.* at 284:6-15.

⁵⁶⁸ Carlson, Exh. IC-8T at 3:16-17.

⁵⁶⁹ *Id.* at 4:5-6.

⁵⁷⁰ *Id.* at 5:20-22.

assignments.⁵⁷¹ Captain Carlson also testifies that since early 2021, PSP is performing “more expansive recording practices” on the number of delays, and that prior to 2021 the recording of a delay was left to the discretion of the dispatchers.⁵⁷²

316 In its Brief, PSP notes that the association implemented seven different efficiency measures following Final Order 09, which improved on-watch efficiency by 5.4 percent compared to data from 2019 and 2022.⁵⁷³ PSP notes that callbacks continue at an excessive rate and that the average PSP member pilot is working 190 days annually, a significant departure from equal amounts of time on/time off.⁵⁷⁴

317 *Commission Determination.* We decline to adopt any of PMSA’s proposed efficiency measures at this time. In Final Order 09, the Commission expressed concern that PSP “(1) does not efficiently distribute its workload, (2) presents its workload data in an inconsistent manner, and (3) pays its pilots equally despite significant disparities in individual pilot workloads.”⁵⁷⁵ The Commission also recommended that PSP retain an outside consultant to study its organizational efficiency.⁵⁷⁶ At the same time, however, the Commission recognized that PSP had “[c]ommendably” limited vessel delays despite being staffed at average demand levels, rather than peak demand levels.⁵⁷⁷

318 In this case, we are not presented with a granular assessment of PSP’s dispatch system or the hours worked by individual pilots. PSP has not concluded its work with outside consultants, either. To some degree, the difficult questions around the distribution of assignments and dispatch efficiency raised in Final Order 09 remain unresolved.

319 The record establishes, however, that PSP member pilots work a larger number of hours and perform a higher number of off-duty assignments than other pilotage districts. The BPC authorizes a number of pilots below peak demand levels, necessitating some level of off-duty work.⁵⁷⁸ In early 2021, PSP was required to implement new rest rules contained

⁵⁷¹ *Id.* at 6:1-2; WAC 353-116-081(5).

⁵⁷² *Id.* at 6:2-10.

⁵⁷³ PSP Brief ¶ 63.

⁵⁷⁴ *Id.* ¶¶ 63-64.

⁵⁷⁵ Final Order 09 ¶ 103.

⁵⁷⁶ *Id.* ¶ 109.

⁵⁷⁷ *See id.* ¶¶ 226-27.

⁵⁷⁸ *See* Carlson, Exh. IC-1T at 17:3-5.

in WAC 363-116-081, limiting pilot availability,⁵⁷⁹ and during this period, PSP was six to seven pilots short of even the BPC authorized number.⁵⁸⁰

320 PSP has implemented several efficiency measures, such as a “rolling start,” in response to Final Order 09, and Captain Carlson notes improvements in efficiency when comparing 2019 and 2022. PSP deserves credit for looking for opportunities to improve, and it appears that this work will continue.

321 We have considered Captain Moore’s proposed metrics for pilot efficiency, but in our judgment these metrics would be more appropriately developed through a workshop process with the parties or, alternatively, through the BPC. We are hesitant to approve any metrics that might create incentives or disincentives at cross-purposes to the BPC’s mission.

322 We have also considered Captain Moore’s proposal for cost-sharing.⁵⁸¹ In our regulatory experience, cost-sharing or revenue-sharing mechanisms are established in connection with fully established rate-making methodology and/or related to highly variable costs like those in the context of power cost recovery mechanisms. Such a mechanism should carefully balance ratepayers’ interests against the association’s opportunity to earn its authorized rate of return. We are hesitant to adopt any cost-sharing mechanism in this proceeding, particularly when PSP has faced a problem of under-recovery in recent years, rather than over-recovery. Further as previously discussed, like tariff adjusters, it is also premature to approve a cost-sharing mechanism outside of a fully established rate-making methodology.

323 Finally, we have considered Captain Moore’s proposed customer credit for delays in providing pilotage services.⁵⁸² Although PMSA raises valid concerns with the increased number of reported delays, Captain Carlson testifies that PSP is performing “more expansive recording practices” on the number of delays, and that prior to 2021 the recording of a delay was left to the discretion of the dispatchers.⁵⁸³ This testimony is unrebutted and weighs against adopting any such customer credit.

⁵⁷⁹ Carlson, Exh. IC-8T at 5:20-22.

⁵⁸⁰ *Id.* at 4:5-6.

⁵⁸¹ Moore, Exh. MM-1T at 280:4-5.

⁵⁸² *Id.* at 281:13-19.

⁵⁸³ Carlson, Exh. IC-8T at 6:2-10.

9. PPP Loan Adjustment

- 324 PSP witness Burton proposes a restating adjustment of \$362,969 to remove amounts related to Payroll Protection Program (PPP) loan forgiveness.⁵⁸⁴ PSP received a loan on April 15, 2020, and the loan was forgiven during the test year on July 23, 2021.⁵⁸⁵ Because this loan forgiveness was recorded on PSP's books as a "negative expense," Burton's restating adjustment effectively zeroes out the balance of this account.⁵⁸⁶
- 325 Staff's revenue requirement model reflects an adjustment identical to PSP.⁵⁸⁷ Yet, in testimony, Simmons recommends "removing the negative adjustment to the income statement recommended by [PSP]."⁵⁸⁸ Simmons argues that because the loan funds did not originate in the test year it is inappropriate to then include the effects of the loan forgiveness.⁵⁸⁹
- 326 On rebuttal, Burton expresses confusion with Staff's proposed adjustment, and interprets Staff's proposed adjustment as including these funds in "regulatory income but [Staff] did not make an adjustment to regulatory income."⁵⁹⁰
- 327 *Commission Determination.* The Commission accepts PSP's proposed restating adjustment for its PPP Loan. This adjustment is technically contested. However, the Commission is also confused by Staff's testimony. The lack of clarity between Staff's testimony and exhibits requires the Commission to give little weight to Staff's testimony and decide in favor of allowing PSP's proposed adjustment, which properly recognizes the forgiveness of the PPP Loan absent an accounting petition.

10. Fuel Expenses

- 328 PSP witness Burton proposes a \$268,331 pro forma adjustment to test year fuel expenses. Burton explains that this adjustment multiplies the gallons of fuel used in the test year by

⁵⁸⁴ See Burton, Exh. WTB-4Tr at 7:9-17; Burton, Exh. WTB-5r ("Restating Entries").

⁵⁸⁵ Burton, Exh. WTB-8T at 16:21-17:3.

⁵⁸⁶ Burton, Exh. WTB-5r ("Results of Operations" and "Restating Entries" *see* Adjustment R-08).

⁵⁸⁷ Simmons, Exh. JNS-2r, "Sch 1.1 Results of Oper" worksheet.

⁵⁸⁸ Simmons, Exh. JNS-1T at 11:7-19.

⁵⁸⁹ *Id.* at 11:22.

⁵⁹⁰ Burton, Exh. WTB-8T at 17:4-5.

the most current diesel price paid by PSP, \$5.86 per gallon, from June 2022.⁵⁹¹ This results in total fuel expenses of \$572,694.⁵⁹²

329 Staff witness Simmons recommends an adjustment of \$138,668,⁵⁹³ bringing total fuel expenses to \$443,031. Simmons uses actual fuel expenses from June 2021 through June 2022 and argues that Staff would have preferred data from January-December 2022.⁵⁹⁴ However, PSP “could not or would not supply the invoices necessary to use that data.”⁵⁹⁵

330 Captain Moore proposes that total test year fuel expenses should be \$450,409.⁵⁹⁶ Captain Moore uses a price of \$4.39 per gallon from December 2022, and applies this to average fuel gallons from 2017-2021.⁵⁹⁷ He argues that averaging fuel usage better addresses vessel traffic changes over time and more closely approximates the demand for pilot boat use.⁵⁹⁸

331 On rebuttal, Burton argues that Staff uses July 2021 through June 2022 rather than the most recent 12 months for the test year.⁵⁹⁹ PSP argues that Staff’s fuel expense adjustment does not reflect the most recent 12 months.⁶⁰⁰

332 PSP multiplied the test year fuel gallons by the per gallon price in June 2022.⁶⁰¹ PSP argues that fuel adjustments should be based on the most recent 12 months before rate implementation as fuel prices continue to be volatile.⁶⁰²

333 *Commission Determination.* The Commission finds that Staff’s approach to, and proposed adjustment for, fuel expenses is the most reasonable approach. It is also more

⁵⁹¹ Burton, Exh. WTB-4Tr at 14:2-5.

⁵⁹² Burton, Exh. WTB-5r.

⁵⁹³ Simmons, Exh. JNS-1T at 13:2-3; Exh. JNS-2r.

⁵⁹⁴ Simmons, Exh. JNS-10T at 5:17-6:3.

⁵⁹⁵ *Id.*

⁵⁹⁶ Moore, Exh. MM-1T at 42:23-25.

⁵⁹⁷ *Id.* at 42:15-25.

⁵⁹⁸ *Id.* at 43:1-13.

⁵⁹⁹ Burton, Exh. WTB-8T at 18:3-5.

⁶⁰⁰ *Id.* at 18:13-15.

⁶⁰¹ *Id.* at 18:19-21.

⁶⁰² *Id.* at 19:2-4.

consistent with the Commission's approach for fuel expenses in other transportation industries.⁶⁰³

334 The Commission therefore adopts Staff's proposed adjustment for fuel expenses for purposes of determining the revenue requirement in Attachment A to this Order. But in its compliance filing following the entry of this Order, PSP must update fuel costs based on actual fuel costs for the most recent 12-month period available, using Staff's approach.

11. Pilot Training Expenses

335 PSP witness Burton testifies that training is required for all pilots regardless of their license level.⁶⁰⁴ Burton notes, "due to the COVID-19 pandemic, necessary and vital training has not occurred. PSP requests an increase in training expenses be allowed for the next three years, so that the new pilots, as well as the entirety of the pilot corps, may attend and 'catch up' on necessary training."⁶⁰⁵ Burton therefore proposes a \$356,305 pro forma adjustment for anticipated pilot training expenses during the rate year.⁶⁰⁶

336 Staff witness Simmons recommends a \$201,034 pro forma adjustment for anticipated pilot training expenses.⁶⁰⁷ Simmons took the average costs at the five schools that PSP used in its adjustment and used this average to establish a single training rate for all pilots.⁶⁰⁸ This was done because pilots will not know exactly what location will be available at the time they can go.⁶⁰⁹ Simmons then removed the three new pilots listed for training, as she claims these pilots are not known and measurable.⁶¹⁰ Finally, Simmons

⁶⁰³ *E.g.*, WAC 480-70-346 ("A company filing a rate change based on changes in general operating expenses must update the test period fuel costs using actual fuel costs for the most recent twelve-month period.").

⁶⁰⁴ Burton, Exh. WTB-4Tr at 12:15.

⁶⁰⁵ *Id.* at 12:15-19.

⁶⁰⁶ *See* Exh. WTB-05, "Training Exp" worksheet.

⁶⁰⁷ Simmons, Exh. JNS-1T at 15:21.

⁶⁰⁸ *Id.* at 16:2-5.

⁶⁰⁹ *Id.* at 16:4-5.

⁶¹⁰ *Id.* at 16:6-7.

recommends amortizing the Bridge Resource Management for Pilots (BRMP) training costs of \$129,500 over five years, because these classes happen every five years.⁶¹¹

337 In cross-answering testimony, Captain Moore agrees with Staff that the BRMP training expenses should be amortized over five years.⁶¹² Applying the same logic, Captain Moore recommends amortizing all training expenses, including manned-model training expenses, over five years.⁶¹³

338 In rebuttal testimony, Burton disagrees with Staff's proposed adjustments.⁶¹⁴ Burton explains that pilots are required to attend various trainings including "manned-model" training, which is the "gold standard when it comes to ship handling."⁶¹⁵ Burton notes that PSP rarely uses the Louisiana location and has not used the Seattle location since before the last rate case.⁶¹⁶ Louisiana was only used during the pandemic when international travel was restricted.⁶¹⁷ Burton argues that Staff's proposal to average the cost of the classes does not cover the actual cost of sending PSP pilots to this required training.⁶¹⁸

339 Burton also disagrees with Staff's second recommendation to remove three new pilots for training. Burton claims that the "new pilot" reference in PSP's workpapers was intended as a placeholder for the first three PSP pilots that would be attending escort training in Spring 2023.⁶¹⁹ Burton maintains that these pilots are known and measurable because the "four PSP pilots (as indicated in PSP's workpapers) are confirmed for attending escort training this spring."⁶²⁰

340 Finally, Burton disagrees with Staff's proposed adjustment that would amortize the costs of BRMP training over five years. Burton explains that pilots attend BRMP training

⁶¹¹ *Id.* at 16:8-10.

⁶¹² Moore, Exh. MM-63T at 26:22-23.

⁶¹³ *Id.* at 27:3-7.

⁶¹⁴ Burton, Exh. WTB-8T at 28:15.

⁶¹⁵ *Id.* at 27:12-28:11.

⁶¹⁶ *Id.* at 29:4-5.

⁶¹⁷ *Id.* at 29:4-6.

⁶¹⁸ *Id.* at 29:7-9.

⁶¹⁹ *Id.* at 29:14-16.

⁶²⁰ *Id.* at 29:11-18.

every five years, not that the training is only held once every five years.⁶²¹ The training occurs on an ongoing basis for different pilots.⁶²²

341 *Commission Determination.* We accept Staff’s proposed adjustment for pilot training expenses. As Staff contends, it was reasonable to average the costs of attending six different training facilities “given that PSP offered no training schedule or other document indicating that it knew which particular school it was sending its employees to over the rate years, and its unwillingness to provide expenses outside of the 2021 test year would have prevented Staff from sifting through other years to look at attendance trends.”⁶²³ By objecting to providing data to support its request for training expenses, and relying on general descriptions of pilot training, PSP undermines its own case as the party bearing the burden of proof. For the same reasons, we accept Staff’s proposal to amortize BRMP training expenses over five years.

342 We further agree with Staff’s concern that PSP relied on a placeholder in its direct testimony and only confirmed that four pilots would attend training in rebuttal testimony.⁶²⁴ Waiting until rebuttal testimony to provide justification for pro forma adjustments undermines the rights of Staff and other parties and incorrectly suggests that the parties are required to engage in a continuous audit of the rate case.⁶²⁵

12. Transportation Expenses

343 Burton proposes a \$45,415 pro forma adjustment for transportation expenses,⁶²⁶ reflecting the costs associated with repositioning pilots to and from the Port Angeles pilot station and the expense of transportation to and from revenue-generating assignments.⁶²⁷ Unlike other operating expenses, these transportation expenses are intended to be recovered through a transportation charge applied as a flat rate directly to each customer

⁶²¹ *Id.* at 30:1-2.

⁶²² *Id.* at 30:2-4.

⁶²³ Staff Brief ¶ 51 (citing Simmons, Exh. JNS-1T at 16:3-5).

⁶²⁴ *Id.* ¶ 53 (citing *inter alia* Simmons, Exh. JNS-1T at 16:6-7).

⁶²⁵ See, e.g., *Wash. Utils. & Transp. Comm’n v. Cascade Nat. Gas Co.*, Docket UG-200568, Order 05, at 86 ¶ 287, 87-88 ¶ 291 (May 18, 2021); *Wash. Utils. & Transp. Comm’n v. Puget Sound Energy, Inc.*, Dockets UE-090704 & UG-090705 (consolidated), Order 11, at 14-15 ¶ 32 (Apr. 2, 2010).

⁶²⁶ Burton, Exh. WTB-5r, (“Transportation” worksheet).

⁶²⁷ Burton, Exh. WTB-4Tr at 16:4-17.

per vessel movement.⁶²⁸ Along with its pro forma adjustment to transportation expenses, PSP proposes to increase the transportation charge in its tariff in order to cover these increased expenses.⁶²⁹

344 Burton argues that the currently effective transportation tariff charge of \$168.20 does not recover the actual transportation charges incurred during a full 12-month period.⁶³⁰ To allow for better recovery, PSP used January 2022 invoices as a proxy for January 2021.⁶³¹

345 Staff witness Young does not directly address these costs in response testimony but proposes a different transportation charge than PSP's proposal.⁶³² Specifically, Young proposes a 14.0 percent increase in the Item 340 transportation charge, which Staff applied to most tariff rates on a uniform basis.⁶³³

346 Captain Moore argues that the Commission "clearly enunciated the logic behind its decision" on transportation expenses in Final Order 09.⁶³⁴ The Commission found that PSP had not carried its burden to demonstrate the need to broaden the costs of pilot transportation to include commute costs and travel back and forth to a pilot's home as opposed to the fixed costs associated with either the PSP Seattle Office or the pilot station in Port Angeles.⁶³⁵

347 Captain Moore also notes that when PSP was asked by Staff in this case to produce representative samples of invoices that showed what the "actual transportation charges invoiced" included, PSP produced invoices with redacted pick-up and drop-off locations.⁶³⁶

⁶²⁸ See PSP Tariff No. 01

⁶²⁹ Burton, Exh. WTB-5r, ("Transportation" worksheet).

⁶³⁰ Burton, Exh. WTB-4Tr at 16:21-23.

⁶³¹ Burton, Exh. WTB-4Tr at 16:23-24,17: 1.

⁶³² Young, Exh. MY-10.

⁶³³ Young, Exh. MY-1T at 27:16-18.

⁶³⁴ Moore, Exh. MM-1T at 33:15-16.

⁶³⁵ *Id.* at 33:15-21.

⁶³⁶ *Id.* at 33:22-26.

348 In rebuttal, Burton argues that PSP has properly tracked transportation expenses and that it has “resolved” the issues with the three-month transportation study and the affiliated transactions discussed in Final Order 09.⁶³⁷

349 *Commission Determination.* In Final Order 09, the Commission found that there was “little justification” for PSP’s proposal to move from its historical practice to a more generous system of reimbursement for pilot transportation expenses.⁶³⁸ PSP did not establish that this was a prevalent industry practice or a reasonable expense for ratepayers to bear.⁶³⁹ The Commission also noted that PSP sometimes relies on pilot-owned businesses for transportation, and “[t]o the extent that PSP contracts with transportation companies owned by member pilots, PSP should establish that these contracts are reasonable and do not result in inflated transportation expenses.”⁶⁴⁰

350 In this case, PSP requests that the Commission allow it to recover a broader range of transportation expenses, but it again fails to justify this proposal. PSP does not explain why the association should be compensated not merely for the costs of pilots commuting from the Seattle office to pilotage assignments but for pilots commuting from their individual homes to their assignments. The Commission clearly articulated its reasoning in Final Order 09, and these findings are largely overlooked. PSP also fails to address the Commission’s concerns with affiliated interest transactions. Merely asserting on rebuttal that these issues are “resolved” does not actually “resolve” the issues raised by Final Order 09. For these reasons, we reject PSP’s proposed pro forma adjustment for travel costs and its proposed increase in the travel charge. Also, because the Commission cannot determine to what degree the booked transportation charges include pilot commute costs to and from their homes, the Commission determines that this expense be reduced to the amount authorized by Final Order 09.⁶⁴¹ The travel charge as determined by Final Order 09 should be continued without change.

⁶³⁷ Burton, Exh. WTB-8T at 38:9-13.

⁶³⁸ Final Order 09 ¶ 269.

⁶³⁹ *Id.*

⁶⁴⁰ *Id.* ¶ 274.

⁶⁴¹ *Id.* ¶ 273. *See also* Larue, Exh. AMCL-2r2 (“Sch. 1.1 Results of Oper”). The Commission accepted Staff’s proposal to remove PSP’s proposed restating adjustment and authorized the amount booked in the test period (\$1,229,599).

13. DEI Donations and DEI Outreach

- 351 PSP proposes two \$20,000 pro forma adjustments for estimated increases in “DEI Outreach” and “DEI Donations,” collectively, “DEI expenses.”⁶⁴² Burton testifies that in early 2022, PSP adopted a formal DEI policy and began researching costs that will be incurred to launch this program, including training conferences, outreach, sponsorships, and scholarship opportunities.⁶⁴³ Burton notes that sponsorship expenses are not usually recovered in rates but argues that these sponsorships enable PSP to send attendees to conferences at no charge.⁶⁴⁴ Because this is a pilot program, historical cost information to help justify its planned future expenses are not available; however, Burton does provide estimates that form the bases for these adjustments.⁶⁴⁵ Burton estimates total DEI expenses of \$42,150, however PSP only requests recovery of \$40,000 after removal of \$2,150 in membership dues.⁶⁴⁶
- 352 In response testimony, Staff witness Simmons recommends that the Commission disallow PSP’s proposed \$20,000 in “DEI Donations,” but allow the \$20,000 training expense related to “DEI Outreach.”⁶⁴⁷ Simmons asserts that PSP did not provide adequate support for its “DEI Donations” adjustment, and therefore the total amount of \$20,000 is not known and measurable.⁶⁴⁸ PSP provided “at best, budget forecasts, not any evidence providing certainty that they would spend the money they seek to recover.”⁶⁴⁹ Simmons recommends that the Commission disallow this adjustment in rates but review the “DEI Donations” account in PSP’s next general rate case if it supplies the proper support for the account.⁶⁵⁰

⁶⁴² Burton, Exh. WTB-5r (“Results of Operations” worksheet).

⁶⁴³ Burton, Exh. WTB-4Tr at 17:4-10.

⁶⁴⁴ *Id.* at 17:17-19.

⁶⁴⁵ Burton, Exh. WTB-4Tr at 17:20-23.

⁶⁴⁶ Burton, Exh. WTB-5r, “DEI” worksheet and Burton, Exh. WTB-05, “Results of Operations” worksheet.

⁶⁴⁷ Simmons, Exh. JNS-10T at 2:2-5.

⁶⁴⁸ Simmons, Exh. JNS-1T at 10:3-6.

⁶⁴⁹ *Id.* at 10:13-15.

⁶⁵⁰ Simmons, Exh. JNS-10T at 2:3-5.

- 353 Captain Moore agrees with PSP's proposal to include DEI training costs in rates.⁶⁵¹ This proposed adjustment would allow \$22,150 in DEI training costs in rates.⁶⁵² Captain Moore argues, however, that the sponsorship expenses should not be allowed, as even PSP acknowledged that these expenses are usually not allowed for recovery.⁶⁵³
- 354 *Commission Determination.* We agree with Staff that PSP should be allowed to recover \$20,000 in training expenses related to "DEI Outreach," after removing the membership dues that should not be included in rates, but that the Commission should reject the adjustment for "DEI Donations" as not being known and measurable.⁶⁵⁴ Budgets and forecasts are not normally an appropriate basis for pro forma adjustments.⁶⁵⁵

14. BPC Self Insurance Premiums Surcharge

- 355 Burton explains that PSP is required to collect two pass-through surcharges and remit the funds to the BPC.⁶⁵⁶ Those surcharges are the self-insurance premiums (SILA) surcharge, along with the BPC's training surcharge, which funds the stipends paid to PSP's pilots in-training.⁶⁵⁷ Both surcharges are reflected in PSP's tariff under Item 380.⁶⁵⁸ Burton notes that the currently active SILA surcharge is set at \$16 per vessel movement, and that it will expire on June 30, 2023.⁶⁵⁹
- 356 Captain Moore argues that, because the BPC SILA surcharge will expire on June 30, 2023, prior to the rates in this case becoming effective, this surcharge should be removed from PSP's tariff.⁶⁶⁰

⁶⁵¹ Moore, Exh. MM-1T at 53:12-17.

⁶⁵² Simmons, Exh. JNS-10T at 3:18.

⁶⁵³ Moore, Exh. MM-1T at 53:16-18.

⁶⁵⁴ See Simmons, Exh. JNS-10T at 4:2-10.

⁶⁵⁵ E.g., *WUTC v. Avista Corporation d/b/a Avista Utilities*, Dockets UE-090134 and UG-090135 (consolidated) Order 10 ¶ 78 (December 22, 2009) (noting the company's proposal was "tantamount to requiring either a continuous audit during the pendency of a rate proceeding or acceptance of budgeted or forecasted data as known and measurable.").

⁶⁵⁶ RCW 81.116.020 (4).

⁶⁵⁷ Burton, Exh. WTB-4Tr at 18:21-23

⁶⁵⁸ *Id.* at 18:21-22.

⁶⁵⁹ *Id.* at 19:3-5.

⁶⁶⁰ Moore, Exh. MM-63T at 23:19-26.

357 *Commission Determination.* Because the SILA surcharge is a pass-through charge, PSP has properly excluded this surcharge from its proposed revenue requirement. Pursuant to WAC 363-116-301(2), this SILA surcharge should be removed from PSP’s tariff in the compliance filing following the entry of this Order.

15. Pilot License/Legal Liability Insurance

358 Captain Moore testifies that PSP carries “Pilot License/Legal Liability” and “Excess Pilots Legal Liability” policies.⁶⁶¹ Captain Moore argues that pilots perform their duties as independent contractors and that these costs are properly transferred to pilot DNI.⁶⁶² Furthermore, to the extent that these policies seek to insure against criminal acts, such coverage is contrary to public policy and should therefore be paid out of pilot DNI.⁶⁶³

359 In rebuttal testimony, PSP witness Sean McCarthy discusses pilot liability coverage and the statutory limit on pilot liability for acts of negligence piloting foreign-flagged vessels.⁶⁶⁴ McCarthy testifies that policy language for criminal acts is carefully focused on instances where negligent behavior is criminalized and that it would pay for the pilot’s legal defense.⁶⁶⁵

360 *Commission Determination.* The Commission agrees in part with PMSA that policies that seek to insure against criminal acts should be paid from pilot DNI, reducing the association’s revenue requirement by approximately \$21,000. As PMSA submits, Washington courts have held that it is contrary to public policy to allow a person to purchase insurance for criminal acts.⁶⁶⁶ However, the remaining costs for “Pilot License/Legal Liability” and “Excess Pilots Legal Liability” policies do not raise the same concern and are properly funded in the revenue requirement as an organizational expense.

⁶⁶¹ Moore, Exh. MM-1T at 37:1-2.

⁶⁶² *Id.* at 37:10-17.

⁶⁶³ *Id.* at 58:5-20.

⁶⁶⁴ McCarthy, Exh. SM-1T at 2:23-5:21.

⁶⁶⁵ *Id.* at 6:24-7:8.

⁶⁶⁶ Moore, Exh. MM-1T at 58:12-15 (citing *Queen City Farms v. Central Nat’l Ins. Co.*, 64 Wn. App. 838, 862 n.15 (1992) (“It has long been against public policy to allow a person to purchase insurance for his immoral, criminal or fraudulent acts.”)).

16. B&O Taxes

361 Burton provides a pro forma adjustment of \$413,357 reflecting increased business & occupation (B&O) taxes on PSP's estimated revenue at pro forma rates.⁶⁶⁷

362 In cross-answering testimony, Staff witness Simmons clarifies that Staff intended to include B&O taxes in the amount of \$105,046.⁶⁶⁸

363 *Commission Determination.* The Commission finds that B&O Taxes should be updated to reflect the approximately \$42.0 million revenue requirement adopted in this Order. The Commission therefore rejects both PSP and Staff's proposed adjustments and offers its own. PSP incurs taxes on its gross revenues from both the State of Washington and City of Seattle, at rates of 1.75 percent and 0.427 percent, respectively.⁶⁶⁹ In order to align PSP's adjusted pro forma revenue from its Results of Operations with the appropriate level of B&O taxes associated with this revenue, the Commission finds that a pro forma adjustment of \$171,643 to the amount booked by PSP in its test year is necessary. Also, the Commission has included a gross-up to reflect these revenue-sensitive taxes in determining the \$42.0 million total revenue requirement, recognizing the effect of the additional annual revenue requirement authorized by the Commission in this order.

D. RATE DESIGN

1. PSP's proposed tariff changes

364 PSP seeks varying rate increases to its currently existing tariff. Captain Carlson proposes decreases in rates charged to yachts through its newly created "under 2,000 gross ton" rate category added to both Tariff Items 300 and 310.⁶⁷⁰ Captain Carlson proposes to increase tonnage charges for all vessels over 2,000 gross tons by 9 percent, applied on a per-ton basis.⁶⁷¹ Harbor shift fees would be doubled, which are applied as a flat rate but vary based on the size of the vessel.⁶⁷² Captain Carlson argues that this will bring harbor shift fees more in line with the level of work required relative to PSP's tonnage

⁶⁶⁷ Burton, Exh. WTB-5r (B&O Tax Expense).

⁶⁶⁸ Simmons, Exh. JNS-10T at 3:6-10.

⁶⁶⁹ Burton, Exh. WTB-5r (B&O Tax Expense).

⁶⁷⁰ *Id.* at 28:17-18.

⁶⁷¹ Carlson, Exh. IC-1T at 28:12-13.

⁶⁷² *Id.* at 28:13-14.

charges.⁶⁷³ Cancellation charges would be increased by 50 percent “to create a disincentive to steamship company agents to make cancellations, which are highly inefficient for PSP’s pilot dispatch system.”⁶⁷⁴ Captain Carlson also proposes a separate tonnage pension surcharge to recover the costs of the current pay-as-you-go pension.⁶⁷⁵

365 Costanzo argues that because of an “oversight in connection with Order 09,” the rates for yachts nearly doubled from its previously existing rates, which were much higher than that experienced by other vessel types.⁶⁷⁶ Costanzo argues that pilotage fees from these vessels amount to just \$126,326 in total annual revenue, which represents only .004 percent of total pilotage revenues.⁶⁷⁷ Costanzo submits that these vessels have a lower risk profile than commercial oceangoing cargo vessels because they have much lower fuel on board, operate at slower speeds, and are easier to navigate.⁶⁷⁸

366 In response testimony, Staff witness Young recommends increasing rates based on a fixed percentage.⁶⁷⁹ In Exhibit MY-10, Young applies an increase of 14.0 percent to most tariff rates. Young does not directly address the issue of reduced rates for yachts.

367 In response testimony, PMSA witness Captain Moore disagrees with PSP’s assertion that the Commission made an “oversight” when establishing the currently effective rates.⁶⁸⁰ In PSP’s last general rate case, the association proposed an increase that more than doubled rates charged to yachts, and PSP argued that its proposal was more reasonable than Staff’s proposal that would have further increased rates to these yachts.⁶⁸¹ Captain Moore notes that the Commission adopted PSP’s proposed rate structure on this issue.⁶⁸²

368 Captain Moore testifies that the current proposed reduction to yacht rates is the result of a quid pro quo agreement resulting from PSP’s negotiations with Pacific Yacht

⁶⁷³ *Id.* at 28:14-15.

⁶⁷⁴ *Id.* at 28:15-17.

⁶⁷⁵ *Id.* at 28:17-19.

⁶⁷⁶ Costanzo, Exh. CPC-1T at 51:15-17.

⁶⁷⁷ *Id.* at 52:4-7.

⁶⁷⁸ *Id.* 52:9-11.

⁶⁷⁹ Young, Exh. MY-1T at 27:16-18.

⁶⁸⁰ Moore, Exh. MM-1T at 266:5-7.

⁶⁸¹ *Id.* at 267:23-2.

⁶⁸² *Id.* at 268:5-7.

Management (PYM) and Northwest Marine Trade Association (NMTA).⁶⁸³ Captain Moore contends that emails between PSP, PYM, and NMTA representatives show that PYM And NMTA agreed to support PSP’s proposed pension transition in exchange for reduced rates for yachts.⁶⁸⁴ He recommends the Commission “deny this tariff adjustment as requested under false premises,” and that the Commission discount any public comments or testimony made by PYM and NMTA in support of PSP’s retirement plan.⁶⁸⁵

369 In rebuttal testimony, Costanzo maintains that there are valid reasons for the proposed rate decrease for yachts, which is not based on a “false premise,” as Captain Moore claims.⁶⁸⁶ Costanzo explains that PSP came to better understand PYM’s and NMTA’s concerns through pension negotiations and was able to propose a rate design that better reflected the lower risk of piloting these relatively smaller vessels.⁶⁸⁷

370 In its Brief, PSP notes that “the only potential inequity in the rate design from Order 09 was the nearly doubling of rates for foreign yachts, which is addressed in this case by lowering those rates to approximately 60 percent of the rates established for year two in Order 09.”⁶⁸⁸

371 *Commission Determination.* We agree with Staff that PSP’s additional annual revenue requirement increase should be applied as an equal percentage increase to Tariff Items 300, 310, 350, 360, and 370, following the same method as applied in Exhibit MY-10.⁶⁸⁹ We agree that this equal percentage increase should not be applied to vessels with a gross tonnage under 2,000 tons, as this represents a new tonnage category addressed below. The “carried out of district” charge under Tariff Item 370 should remain the same as proposed by both PSP and Staff.⁶⁹⁰

372 We have considered PSP’s proposed changes to the harbor shift charges and cancellation charges, among other items, but we decline to adopt these proposals at the present time.

⁶⁸³ See Moore, Exh. MM-1T at 264:6-13.

⁶⁸⁴ *Id.* at 265:4-23. *But see* Moore, Exh. MM-57 (indicating that PSP denies any such quid pro quo agreement).

⁶⁸⁵ *Id.* at 268:22-26.

⁶⁸⁶ Costanzo, Exh. CPC-22T at 32:9-26.

⁶⁸⁷ See *id.* at 33:4-7.

⁶⁸⁸ PSP Brief ¶ 40.

⁶⁸⁹ Young, Exh. MY-1T at 27:16-18. See also Young, Exh. MY-10 (Staff Proposed Tariff Rates).

⁶⁹⁰ See Young, Exh. MY-10.

In Final Order 09, the Commission adopted PSP's proposed tariff restructuring, which sought to simplify tariff charges for ratepayers.⁶⁹¹ The Commission found that PSP's proposed tariff provided a "reasonable balance" between charging larger vessels more while avoiding overcharging those same customers.⁶⁹² The Commission declined to adopt Staff's proposed rate design, which would place greater weight on a service time charge and would likely result in rate shock for smaller vessels.⁶⁹³

373 We decline to make significant changes to PSP's harbor shift charges or its cancellation charge at this point. There is no evidence in the record related to the potential impact that doubling harbor shift charges may have on different vessels. Additionally, cancellations that have a material effect on PSP's dispatch system appear far less common than vessel delays.⁶⁹⁴ These factors undermine any justifications for increasing the cancellation charge. We also decline to increase Item 340 transportation charges, as discussed in Section B.12 above.

374 We agree with PSP and Staff, however, that a new tonnage class should be created for vessels under 2,000 gross tons. Costanzo explains that as a result of Final Order 09 the rates for yachts nearly doubled from its previously existing rates.⁶⁹⁵ Yet pilotage fees from these vessels amount to just \$126,326 in total annual revenue, representing only .004 percent of total pilotage revenues.⁶⁹⁶ Given the testimony from PSP and the positions of PYM and NMTA on this same issue, we accept PSP's proposed rate class for vessels under 2,000 gross tons and the resulting decrease in rates for these vessels.

375 We have considered PMSA's position that PYM's and NMTA's support for PSP's proposed transition to a defined-benefit retirement plan are the result of an improper quid pro quo agreement. Because the Commission has determined that PSP must secure necessary approvals for its proposed MEP and the Commission has reserved any ruling on the recovery of these costs for a future proceeding,⁶⁹⁷ it is not necessary to address this

⁶⁹¹ Final Order 09 ¶ 356.

⁶⁹² *Id.* ¶ 358.

⁶⁹³ *Id.* ¶ 359.

⁶⁹⁴ *Compare* Carlson, Exh. IC-8T at 10:1-10 ("Reduce cancellations negative impact on dispatch system") *with id.* at 5:3-14 (discussing the recording of an increased number of vessel delays pursuant to new instructions from Captain Carlson in 2021).

⁶⁹⁵ Costanzo, Exh. CPC-1T at 51:15-17.

⁶⁹⁶ *Id.* at 52:4-7.

⁶⁹⁷ *See supra*, Section B.3.

issue. Our determination on the path forward for PSP's potential transition to an MEP does not rely on public comments submitted by either PYM or NMTA.

- 376 As we address issues of rate design, it is appropriate to discuss PSP's argument that pilotage rates are insignificant to its customers. PSP provides testimony from Ken Eriksen, who claims that this means rate shock is not possible and that "even doubling or tripling PSP's pilotage fees would have no effect on the number of oceangoing vessels calling Puget Sound."⁶⁹⁸ Eriksen submits that PSP's proposed rates are "clearly a good value in comparison" to other west coast pilotage districts and will not drive vessel traffic away.⁶⁹⁹
- 377 We give Eriksen's testimony partial weight. PSP's current rates are below those of other west coast pilotage grounds.⁷⁰⁰ We do not deny PSP's proposed rate increase on the basis that it would result in rate shock.
- 378 There are, however, reasons to give Eriksen's testimony less than full weight. Captain Moore provides persuasive testimony that Eriksen focuses on the global profit levels of large companies with container shipping operations; ignores other customers, such as bulk carriers, cruise vessels, cargo vessels, and tankers, among others; and ignores variations in shipping industry profit over the last several years.⁷⁰¹ PSP relies on an "exceptionally narrow view" of the container shipping industry's profit and losses "caused by the unprecedented economic shifts in domestic consumption patterns during the pandemic."⁷⁰² Notably, Eriksen does not respond to these arguments in his rebuttal testimony.⁷⁰³
- 379 There are also reasons to question Eriksen's testimony, or at least PSP's arguments based on that testimony, given traditional ratemaking principles.⁷⁰⁴ In Final Order 09, the Commission found that "the profitability of larger vessels should not justify imposing

⁶⁹⁸ Eriksen, Exh. KAE-1T at 41:25-42:4.

⁶⁹⁹ Eriksen, Exh. KAE-4T at 5-20.

⁷⁰⁰ Eriksen, Exh. KAE-1T at 39:1-4.

⁷⁰¹ Moore, Exh. MM-1T at 161:16-166:6.

⁷⁰² Moore, Exh. MM-1T at 163:13-16.

⁷⁰³ *See generally* Eriksen, KAE-5T.

⁷⁰⁴ *See* PSP Brief ¶¶ 40-41 (arguing that pilotage rates are "absolutely insignificant" to shipping companies and that doubling or even tripling pilotage rates would pose "no risk of hardship" for these companies).

greater costs on those vessels” and that it is instead appropriate to charge vessels based on the principle of cost causation.⁷⁰⁵ We come to the same conclusion in this proceeding. Monopoly industries are not entitled to increase rates merely because some of their customers have deep pockets. The burden is on the regulated entity to establish the need for a rate increase, not for ratepayers to demonstrate financial hardship.

380 Before concluding, we address the issue of projected vessel traffic. Pursuant to WAC 480-07-525(4)(m), PSP is required to provide “[p]rojected changes in vessel assignments and a detailed portrayal of vessel assignments for the previous twelve months along with the associated tariff and fees charged to vessel operators for pilotage services as required in chapter 480-160 WAC.” In response to Bench Request No. 4, PSP clarified that projected changes in vessel assignments were located in Burton, Exh. WTB-7 and on the “2023 PF Revenue” tab in Exh. WTB-5r. In PSP’s next general rate case, we expect that PSP clearly identifies its projected vessel assignments and provides supporting testimony on the issue. Projected vessel assignments are crucial to setting rates at an appropriate level that allows PSP to recover its authorized revenue requirement. It is not sufficient for PSP witness Eriksen to simply claim that it is “impossible” to predict vessel traffic,⁷⁰⁶ when projected rate-year vessel assignments are crucial to the rate-setting process and required by Commission rule.⁷⁰⁷

2. Vessel tonnage calculations and TOTE’s intervention

381 Vessel tonnage may be calculated based on either Gross Register Tonnage (GRT) or on gross tonnage measured under the 1969 International Convention on Tonnage Measurement of Ship (GT ICT).⁷⁰⁸ Due to variations in their design, certain vessels may be subject to substantially lower pilotage rates if they are invoiced on the basis of GRT rather than GT ICT. In PSP’s first general rate case before the Commission in Docket TP-190976, PSP changed the vessel tonnage charge in its tariff without directly addressing

⁷⁰⁵ Final Order 09 ¶ 362.

⁷⁰⁶ Eriksen, Exh. KAE-1T at 16:12-14.

⁷⁰⁷ Indeed, Eriksen’s own testimony shows that the traffic by vessel category is relatively consistent, and declined slightly, over the last five years, with notable the exception of cruise ship traffic during the COVID-19 pandemic. *See* Eriksen, Exh. KAE-1T at 5:1-6:7. *Accord* Eriksen, Exh. KAE-4 (“Assignments by Vessel Class”). It is unclear why Eriksen could not provide the projection of vessel traffic required by Commission rule, and why this projection was instead provided by PSP’s primary accounting witness, Burton.

⁷⁰⁸ *See* Essex, Exh. PE-1T at 2:10-15 (noting, among other points, that the term GT ICT is synonymous with International Gross Tonnage or “IGT”).

this change in its testimony or explaining to the Commission that there were at least two ways of calculating a tonnage charge.⁷⁰⁹

382 On August 26, 2021, TOTE filed a petition for rehearing of Final Order 09. TOTE operates two “Orca” class vessels, MIDNIGHT SUN and NORTH STAR, carrying cargo between Washington and Alaska.⁷¹⁰ Historically, TOTE was the only PSP customer charged based on GRT. But TOTE argued that charging it based on GT ICT would cost an additional \$0.72 million over a two-year period.

383 Following TOTE’s petition, the Commission found that PSP failed to justify this proposed tariff change and required PSP to raise the issue of vessel tonnage in its next general rate case.⁷¹¹ The Commission required PSP to identify (and, from the date of TOTE’s August 26, 2021, petition forward, defer to a regulatory liability account) the incremental difference between the revenues collected from TOTE’s two vessels under PSP’s current tariff, (which assesses tonnage rates based on GT ICT), and the amounts PSP would have collected from TOTE for these two vessels had tonnage charges been assessed based on GRT.⁷¹²

384 In direct testimony, PSP argues that GT ICT is a more appropriate measure of vessel size and should be the basis for calculating tonnage charges. PSP witness Phillip Essex testifies that GT ICT is based on the overall volume of the ship, and it provides a “much more accurate and consistent measurement of a vessel’s true size.”⁷¹³ Since 1994, all new vessels engaging in international trade are required to be measured for GT ICT.⁷¹⁴

385 Essex argues that GT ICT is more appropriate for calculating pilotage rates, citing the following assumptions:

⁷⁰⁹ *WUTC v. Puget Sound Energy*, Docket TP-190976, Order 14 ¶ 21 (April 11, 2023) (Docket TP-190976 Order 14).

⁷¹⁰ Loftfield, Exh. CEL-1T at 3:5-6. Morrell, Exh. PM-1T at 1:18.

⁷¹¹ *WUTC v. Puget Sound Pilots*, Docket TP-190976, Order 12 ¶ 34 (February 2, 2022) (Docket TP-190976 Order 12).

⁷¹² *WUTC v. Puget Sound Pilots*, Docket TP-190976, Order 13 ¶ 22 (February 24, 2022) (Docket TP-190976 Order 13).

⁷¹³ Essex, Exh. PE-1T at 2:9-10, 3:4-5.

⁷¹⁴ *Id.* at 7:24-26.

- pilotage rates should not discriminate on a vessel's flag state or whether the ship is engaged in internal or domestic trade;
- pilotage rates should give weight to the relative difficulty and risk of piloting a particular ship; and
- the relative risk and difficulty of piloting is strongly related to a vessel's size.⁷¹⁵

386 Essex submits that focusing on actual ship size is more consistent with the Commission's finding in Final Order 09 that "larger vessels pose relatively greater risk and should thus pay proportionally more in tariff rates."⁷¹⁶ Essex also observes that WAC 363-116-082 limits less-experienced pilots to smaller vessels measured based on GT ITC.⁷¹⁷ PSP witness Captain Klapperich further explains that only pilots in their fourth year of licensure can pilot a TOTE vessel due to their greater than 65,000 GT ITC.⁷¹⁸

387 PSP does not agree that charging TOTE based on GT ICT will result in rate shock. Ken Eriksen testifies that PSP's rates are generally lower than other pilotage associations on the west coast of the United States and Canada.⁷¹⁹ Eriksen submits that PSP's proposed fees are "completely insignificant" compared to the revenues of ocean carriers.⁷²⁰ PSP's proposed fees would amount to 62 cents per Twenty Foot Equivalent Unit (TEU) on a container ship (*i.e.*, per shipping container), or 4/100 of a cent per barrel of crude oil in an oil tanker.⁷²¹

388 Essex argues, however, that charging TOTE based on GRT would result in a "windfall" to TOTE compared to other ships of comparable size.⁷²²

389 PSP makes several criticisms related to calculating vessel tonnage based on GRT. First, Essex explains that GRT subtracts "exemptible spaces," such as engine rooms, that are

⁷¹⁵ *Id.* at 13:17-18. *Accord* Klapperich, Exh. ECK-1T at 51:20-24, Essex, Exh. PE-1T at 13:19-21. *Accord* Klapperich, Exh. ECK-1T at 49:10-12, and Essex, Exh. PE-1T at 13:20-23.

⁷¹⁶ *Id.* at 14:6-7.

⁷¹⁷ *Id.* at 14:11-15. *Accord* Klapperich, Exh. ECK-1T at 50:9-13.

⁷¹⁸ Klapperich, Exh. ECK-1T at 50:15-17.

⁷¹⁹ Eriksen, Exh. KAE-1T at 32:5-35:22. *Accord*, Erickson, Exh. KAE-4T at 2:7-6:11.

⁷²⁰ *Id.* at 41:1-7.

⁷²¹ Eriksen, Exh. KAE-1T at 41:13-22.

⁷²² Essex, Exh. PE-1T at 18:2-6.

not used for cargo.⁷²³ However, countries have interpreted the concept of “exemptible space” differently, and the GRT system has not achieved international standardization.⁷²⁴

390 Second, regarding the measurement of GRT in the United States, Essex explains that federal regulations allow for two main “gimmicks” for reducing a ship’s GRT: “deep framing” in the vessel’s hull and “tonnage openings” in the superstructure.⁷²⁵ Essex submits that it is “hard to overstate” how these two strategies can be used to reduce a vessel’s GRT and that it is possible to eliminate “nearly all of a ship’s superstructure from GRT.”⁷²⁶ TOTE’s ships have an GT ICT to GRT spread of about 2:1, but other ships relying heavily on design “gimmicks” can have a spread of 37:1 or greater.⁷²⁷

391 Essex observes that the container ship cited by TOTE has a similar GT ICT, and PSP concludes that the variation in the ships’ GRT “says far more about their tonnage design efficiency . . . than it does about their true size and, by extension, the relative difficulty of piloting these large ships.”⁷²⁸

392 To reinforce this point, Essex compares TOTE’s vessels to a similar roll-on/roll-off or “RoRo” ship, MYRA SEAWAYS, which has a 4.5 percent lower GRT than a TOTE vessel.⁷²⁹ But MYRA SEAWAYS has approximately half the GT ICT of a TOTE vessel because it is more than 30 meters shorter and 10 meters narrower in beam.⁷³⁰ Essex argues that this demonstrates the unreasonableness of comparing ships based on GRT.⁷³¹

393 In response testimony, Captain Eric Loftfield testifies on behalf of TOTE that its two Orca class vessels “respond quicker and are easier to maneuver than other vessels of similar size.”⁷³² The vessels have twin screws, twin rudders, and a “very high” power to

⁷²³ *Id.* at 4:12-13.

⁷²⁴ *Id.* at 4:1-13.

⁷²⁵ *Id.* at 6:13-17.

⁷²⁶ *Id.* at 6:22-25.

⁷²⁷ *Id.* at 17:18-24.

⁷²⁸ *Id.* at 10:24-11:1. *Accord* Essex, Exh. PE-8T at 2:1-7.

⁷²⁹ *Id.* at 12:14-17.

⁷³⁰ Essex, Exh. PE-1T at 12:10-14.

⁷³¹ *See id.*

⁷³² Loftfield, Exh. CEL-1T at 4:7-8.

weight ratio.⁷³³ Captain Lofffield argues that its ships are safer to pilot than other ships of similar size.⁷³⁴

394 As Philip Morrel explains, each TOTE vessel has a GRT of 35,825 and an IGT of 65,314.⁷³⁵ TOTE's vessels contain large amounts of "exempted space" that is not measured as part of GRT.⁷³⁶ When TOTE vessels' tonnage charges are calculated based on GT ICT, however, TOTE's vessels are charged more than a container ship that can carry four times more shipping containers, referred to in the industry as TEUs.⁷³⁷

395 TOTE argues that the change in PSP's invoicing resulted in nearly doubling the charges it pays for pilotage services per assignment. Alyson Dubs testifies that if PSP calculated tonnage charges based on GRT, each TOTE vessel would be only \$2,446.54 per assignment.⁷³⁸ But if PSP calculates the tonnage charge on the basis of GT ICT, each TOTE vessel would be charged \$4,301.50 per assignment.⁷³⁹ This means each pilotage invoice is \$1,854.96 higher.⁷⁴⁰ Dubs calculates that in rate year one these "excess" tonnage charges amount to \$378,411.84.⁷⁴¹ In rate year two, the excess tonnage charges amount to \$383,825.92.⁷⁴² Dubs arrives at a total impact of \$719,225.28 for both rate years.⁷⁴³

396 In response testimony, Staff witness Young agrees with TOTE that its vessels should be invoiced based on GRT.⁷⁴⁴ Young believes that it was intended that these vessels would be billed based on GRT in PSP's last rate case.⁷⁴⁵ He therefore recommends that PSP

⁷³³ *Id.* at 3:15-16, 4:17.

⁷³⁴ *Id.* at 4:18-20.

⁷³⁵ Morrell, Exh. PM-1T at 2:1-2.

⁷³⁶ *Id.* at 3:6-7.

⁷³⁷ *Id.* at 2:10-26.

⁷³⁸ Dubs, Exh. AAD-1T at 2:12.

⁷³⁹ *Id.* at 3:3.

⁷⁴⁰ *Id.* at 3:12.

⁷⁴¹ *Id.* at 3:19-20.

⁷⁴² *Id.* at 4:20-21.

⁷⁴³ *Id.* at 5:11.

⁷⁴⁴ Young, Exh. MY-11T at 2:12-13.

⁷⁴⁵ *Id.* at 2:18-21.

include tariff language specifically naming MIDNIGHT SUN and NORTHSTAR and providing that they are billed using GRT.⁷⁴⁶

- 397 Captain Moore likewise recommends that TOTE vessels be invoiced based on GRT and that the Commission should order a refund to TOTE of the deferred revenue.⁷⁴⁷ Captain Moore also argues that TOTE vessels are safer to pilot than other vessels of a similar size and that these vessels are being converted to use liquefied natural gas (LNG) for fuel, which poses fewer environmental risks.⁷⁴⁸
- 398 Captain Moore disagrees with PSP's claim that pilotage rates are an insignificant cost to ratepayers.⁷⁴⁹ Captain Moore contends that while container ships garnered larger profits during the COVID-19 pandemic, the cruise ship industry was decimated.⁷⁵⁰ Captain Moore also cites a 2017 study for evidence that Washington ports are losing market share to other ports in southern California and Canada.⁷⁵¹
- 399 In rebuttal testimony, PSP witness Essex disputes TOTE's claim that it is over-billed compared to similarly sized container ships. The "exemptible spaces" in TOTE's vessels are still largely used for cargo and still contribute to the overall size of the vessel.⁷⁵²
- 400 Captain Klapperich argues that it would be inappropriate to consider TOTE vessels' maneuverability or other characteristics in setting rates. TOTE vessels lack bow thrusters, which are found on many cruise ships and container ships.⁷⁵³ TOTE vessels are also "highly susceptible to wind forces," which can require additional tug escorts.⁷⁵⁴ It would be highly subjective and impracticable, Captain Klapperich submits, to base pilotage rates on an individual ship's characteristics based on GRT.⁷⁵⁵

⁷⁴⁶ *Id.* at 3:12-14.

⁷⁴⁷ *See* Moore, Exh. MM-1T at 269:14-17 and Moore, Exh. MM-1T at 269:7-9.

⁷⁴⁸ Moore, Exh. MM-63T at 28:4-7 and Moore, Exh. MM-63T at 28:23-29:18.

⁷⁴⁹ *E.g.*, Moore, Exh. MM-1T at 169:9-19.

⁷⁵⁰ *Id.* at 169:19-25.

⁷⁵¹ *Id.* at 170:5-18 (citing Moore, Exh. MM-47 ("2017 Marine Cargo Forecast and Rail Capacity Analysis, Final Report.")).

⁷⁵² Essex, Exh. PE-8T at 2:21-3:13.

⁷⁵³ Klapperich, Exh. ECK-12T at 4:10-17.

⁷⁵⁴ *Id.* at 5:15-18.

⁷⁵⁵ *Id.* at 5:1-10.

401 In its Brief, PSP maintains that GT ICT is the most reasonable, consistent method for calculating pilotage rates.⁷⁵⁶ PSP argues that there is “no basis” to grant TOTE a “substantial discount” and that the deferred revenue should be distributed to PSP.⁷⁵⁷

402 *Commission Determination.* In PSP’s first general rate case before the Commission in Docket TP-190976, PSP changed the single most important billing determinant in its tariff, the vessel tonnage charge, without directly addressing this change in its testimony or explaining to the Commission that there were at least two ways of calculating a tonnage charge.⁷⁵⁸ PSP also provided the Commission with incorrect workpapers and exhibits, which “substantially interfered with the Commission’s ability to evaluate PSP’s proposed rate design.”⁷⁵⁹ The Commission entered Final Order 09 without addressing the issue of the vessel tonnage charge.

403 After considering this issue for the first time on a fully developed record, we conclude that PSP’s tariff should invoice all vessels based on GT ICT. We are persuaded by the testimony from PSP witness Essex that GT ICT provides a “much more accurate and consistent measurement of a vessel’s true size.”⁷⁶⁰ Invoicing vessels based on GT ICT does not discriminate on a vessel’s flag state or whether the ship is engaged in internal or domestic trade, and it appropriately requires the largest vessels, which pose the relatively greatest risk, to pay more for pilotage services.⁷⁶¹ This finding is consistent with WAC 363-116-082, which limits less-experienced pilots to smaller vessels measured based on GT ITC. Although TOTE argues in favor of invoicing its vessels based on GRT, Essex explains that the “exemptible spaces” in TOTE’s vessels are still largely used for cargo and still contribute to the overall size of the vessel.⁷⁶² The evidence therefore establishes that GT ICT is a more consistent measure of overall vessel size. Because the Commission has found that “larger vessels pose relatively greater risk and should thus pay

⁷⁵⁶ PSP Brief ¶¶ 109-19.

⁷⁵⁷ *Id.* ¶ 120.

⁷⁵⁸ Docket TP-190976 Order 14 ¶ 21.

⁷⁵⁹ Docket TP-190976 Order 14 ¶ 21.

⁷⁶⁰ Essex, Exh. PE-1T at 2:9-10, 3:4-5.

⁷⁶¹ Essex, Exh. PE-1T at 13:17-18. *Accord* Klapperich, Exh. ECK-1T at 51:20-24, Essex, Exh. PE-1T at 13:19-21. *Accord* Klapperich, Exh. ECK-1T at 49:10-12, and Essex, Exh. PE-1T at 13:20-23.

⁷⁶² Essex, Exh. PE-8T at 2:21-3:13.

proportionally more in tariff rates,”⁷⁶³ invoicing all vessels based on GT ICT is more consistent with the rate-setting principle of cost-causation.

404 By comparison, we are concerned that vessels’ GRT measurements may vary widely depending on the use of certain design features, such as openings in the vessel’s structure, and that GRT does not provide a consistent measure of a vessel’s overall size.⁷⁶⁴ Because GRT is affected by vessel design features that do not relate to the actual difficulty of piloting the vessel, invoicing vessels based on GRT would be less consistent with the principle of cost-causation.

405 This case has also raised issues about the relative risks of piloting TOTE vessels compared to other vessels. When ruling on TOTE’s petition for reconsideration of Final Order 09, the Commission declined to rule on the merits of the vessel tonnage issue and observed, among other points, that TOTE had “not yet presented evidence or argument related to the risk of piloting its vessels.”⁷⁶⁵ TOTE accordingly presented evidence in this proceeding addressing the relative risk of piloting its vessels compared to others. But after considering all the evidence, we find that TOTE vessels’ design and technological characteristics should not be a basis for continuing the historical practice of invoicing TOTE based on GRT. As Captain Klapperich explains, TOTE vessels lack bow thrusters, which are found on many cruise ships and container ships.⁷⁶⁶ TOTE vessels are also “highly susceptible to wind forces,” which can require additional tug escorts.⁷⁶⁷ It would be highly subjective and impracticable, Captain Klapperich submits, to base pilotage rates on an individual ship’s characteristics based on GRT.⁷⁶⁸

406 For these reasons, we conclude that GT ICT represents a more consistent, reasonable, and practical method for setting tariff rates. There appears to be little justification for continuing to invoice TOTE based on GRT beyond treating this single company more

⁷⁶³ Essex, Exh. PE-1T at 14:6-7.

⁷⁶⁴ *Id.* at 10:24-11:1. *Accord* Essex, Exh. PE-8T at 2:1-7.

⁷⁶⁵ Docket TP-190976 Order 12 ¶ 28.

⁷⁶⁶ Klapperich, Exh. ECK-12T at 4:10-17.

⁷⁶⁷ *Id.* at 5:15-18.

⁷⁶⁸ Klapperich, Exh. ECK-12T at 5:1-10.

favorably than other shippers. The Commission was not presented with any evidence justifying this historical practice.⁷⁶⁹

407 We next turn to whether TOTE should receive a refund of the deferred incremental difference in revenue. Because this case was the first opportunity for the Commission to consider the vessel tonnage issue based on a fully developed record, we conclude that TOTE should be invoiced based on GT ICT on a prospective basis only. TOTE should receive a refund for the incremental difference in revenue collected between the date of its August 26, 2021, petition for reconsideration and the date of the entry of this Order.

408 If the Commission distributed the deferred funds to PSP and rejected TOTE's request for a refund, this would raise significant concerns with procedural due process. It would also reward noncompliance with Commission rules. In PSP's first general rate case, PSP failed to raise the issue of vessel tonnage, failed to explain changed tariff language as required by WAC 480-160-120(3), and provided the Commission with incorrect exhibits and workpapers that failed to show the impact of this change on TOTE.⁷⁷⁰ These actions substantially interfered with the Commission's ability to decide the vessel tonnage issue and likewise impacted TOTE's ability, as a ratepayer, to ascertain the impacts of proposed tariff changes. PSP clearly did not meet its burden to justify the tariff change in its first general rate case. Thus, it is not fully accurate to state that the tariff established by Final Order 09 incorporates the "correct" tonnage measurement and should be applied from the date of Final Order 09 forward.⁷⁷¹

409 The Commission should not deny TOTE a refund, either, based on PSP's response to TOTE's August 26, 2021, petition. PSP was required to identify, describe, and explain the reasons for the tariff change in its initial filing, not in response to a petition for rehearing after the Commission's final order.⁷⁷² Allowing PSP to retain additional revenues based on a tariff change justified only in response to a petition for rehearing would reward noncompliance with Commission rules, allow PSP to profit from submitting incorrect evidence to the Commission, and insulate PSP from its choice to distribute revenue in the face of pending litigation.

⁷⁶⁹ See, e.g., Klapperich, TR 257:23-24 ("I honestly do not know why it was started or has continued.").

⁷⁷⁰ See Docket TP-190976, Order 12 ¶¶ 22-23.

⁷⁷¹ See PSP Brief ¶ 120.

⁷⁷² See WAC 480-160-120(3).

410 We also address the proper amount of the refund. TOTE witness Dubs submits that the total rate impact was \$719,225.28 for both rate years,⁷⁷³ but this figure incorrectly includes vessel assignments that predate the August 26, 2021, petition.⁷⁷⁴ We agree with PSP’s updated calculation in response to Bench Request No. 5 indicating that the correct amount that should be deferred for 2021 is \$124,282.55 and the correct amount for 2022 is \$349,799.76 for a total of \$474,082.31. PSP should therefore issue a refund to TOTE, based on an updated calculation, that reflects the incremental difference in revenue between invoicing TOTE vessels based on GRT and GT ICT from August 26, 2021, through the date this Order is entered.

E. UNCONTESTED OR OTHERWISE RESOLVED ADJUSTMENTS

411 PSP proposes 18 restating and pro forma adjustments to its revenue requirement that are not opposed by any party. These adjustments are listed in Appendix A to this Order as part of the total authorized revenue requirement and are also provided below:

PSP Adjustment #	Account Name	Increase (Decrease)
Restating		
R-01	Depreciation	207,939
R-07	Computer Maintenance	(57,211)
R-09	Donations	(7,000)
R-10	Lobbyist	(75,309)
R-11	Equipment Leases	152,998
R-12	Pilotage Fees Earned	(2,011,137)
R-14	Puget Sound, Prev. Maintenance	(398,441)
Pro Forma		
P-03	Computer Maintenance	19,070
P-05	Pilotage Fees Earned	5,469,069
P-08	Dues	18,493
P-09	Salaries	159,064
P-10	Employee Health & Welfare	56,446
P-11	Employee Pension	14,584
P-12	Employee 401(k)	18,000

⁷⁷³ Dubs, Exh. AAD-1T at 5:11.

⁷⁷⁴ Compare Dubs, Exh. AAD-3 (including assignments dating before August 26, 2021) with Order 13 at ¶¶ 20-21 (ordering PSP to defer the incremental difference in revenue beginning with the date TOTE’s August 26, 2021, petition).

P-14	Commission-Senate Bill 5096	(150,000)
P-15	License Fees – Pilots	19,500
P-17	Rate Case Expenses	594,472
P-20	DEI Outreach	20,000

412 During the pendency of this case, several issues were resolved in rebuttal testimony or in post-hearing briefs. These adjustments are likewise reflected in Appendix A and are provided below:

- On rebuttal, PSP concedes that its revenue requirement should be reduced by \$389,350 to properly account for callbacks.⁷⁷⁵
- On rebuttal, PSP agrees to remove \$23,490 in unallowable expenses from travel expense.⁷⁷⁶
- In its Brief, Staff concedes the adjustment for \$150 of firewood purchased by an employee.⁷⁷⁷
- Staff concedes PSP’s adjustment to match the per-books numbers with the general ledger.⁷⁷⁸
- Staff also concedes in its Brief that maintenance costs for the Juan de Fuca pilot boat are annual costs that should not be amortized.⁷⁷⁹

413 *Commission Determination.* These adjustments are uncontested or otherwise resolved on rebuttal or in post-hearing brief. Each of these adjustments is adequately supported by the record. Accordingly, we find that these adjustments should be approved without condition.

⁷⁷⁵ Burton, Exh. WTB-8T at 6:11-16.

⁷⁷⁶ Burton, Exh. WTB-08T at 14:16-18. Referring to subaccount 53700-009, Travel and Promotion expense.

⁷⁷⁷ Staff Brief ¶ 55. *See also* Burton, Exh. WTB-08T at 15:10-11 (justifying the purchase of firewood).

⁷⁷⁸ Staff Brief ¶ 55. Burton, Exh. WTB-08T at 13:18-15:20 (discussing the adjustment and related employee reimbursements).

⁷⁷⁹ Staff Brief ¶ 60. *See also* Young, Exh. MY-1T at 26:1-8.

III. FINDINGS OF FACT

414 Having discussed above in detail the evidence received in this proceeding concerning all
material matters, and having stated findings and conclusions upon issues in dispute
among the parties and the reasons therefore, the Commission now makes and enters the
following summary of those facts, incorporating by reference pertinent portions of the
preceding detailed findings:

415 (1) The Commission is an agency of the State of Washington vested by statute with
the authority to regulate rates for pilotage services subject to the Washington
Pilotage Act.

416 (2) PSP is a “[p]erson with a substantial interest” that filed a proposed tariff for
pilotage services, as that term is defined in RCW 81.116.010. PSP provides
pilotage services to vessels in the Puget Sound pilotage district.

417 (3) On June 29, 2022, PSP filed proposed tariff revisions with the Commission.

418 (4) PSP proposes an overall increase of approximately \$15 million in annual
revenues, or 42.3 %.

419 (5) PSP did not provide financial statements for each of the pilotage districts included
in its compensation study as directed by Final Order 09.

420 (6) PSP’s compensation study does not treat pilotage districts in a comparable
manner, comingles data from different years, comingles actual and authorized
DNI distributions, and relies on inaccurate assertions regarding certain districts’
benefits.

421 (7) The number of candidates taking the BPC pilotage examination for the Puget
Sound pilotage district has varied over the last 15 years, regardless of variations in
DNI over time.

422 (8) There has never been a pilot opening in Puget Sound without a BPC-qualified
candidate in training or waiting to train.

423 (9) Relying on actual DNI distributions from 2020 and 2021 as a basis for
determining authorized DNI in this case would penalize PSP member pilots for
temporary downturns in vessel traffic associated with the COVID-19 pandemic.

- 424 (10) Projected 2023 incomes for other west coast pilotage grounds are generally consistent with the authorized DNI of \$475,733 per funded pilot, as approved in this Order.
- 425 (11) The evidence does not demonstrate that increasing compensation for a majority-dominated institution is an appropriate or reasonable means of furthering DEI initiatives.
- 426 (12) The evidence does not demonstrate that it is necessary to further increase DNI, beyond the \$475,733 authorized in this Order, for PSP to attract mariners that represent the “best of the best.”
- 427 (13) PSP’s challenges to shipping industry practices, such as the use of P&I clubs, are not tied to any specific adjustments or other expenses incurred with the provision of pilotage services.
- 428 (14) The evidence does not demonstrate that absolute risk is increasing for pilots in the Puget Sound.
- 429 (15) Relying on unrepresentative vessel assignments from 2020 to determine the number of funded pilots in this proceeding would unreasonably base the funded number of pilots, in part, on temporary downturns in vessel traffic related to the COVID-19 pandemic.
- 430 (16) Funding an additional number of pilots in rates places a “premium” into rates, recognizing the additional work that PSP member pilots are required to perform compared to many other pilotage associations.
- 431 (17) PSP failed to comply with Final Order 09 in several respects in the manner that it conducted retirement workshops prior to filing this general rate case.
- 432 (18) PSP undermined the ability of other parties and the Commission to review and consider its proposed MEP by withholding information in response to data requests.
- 433 (19) The evidence demonstrates that it is uncertain whether the IRS and Department of Labor will approve PSP’s proposed MEP and that the MEP may need to be modified to comply with contribution limitations.

- 434 (20) Pilotage districts do not treat pilot medical benefits in a uniform manner, and in some districts, pilots are required to contribute to the costs of their medical benefits.
- 435 (21) PSP's proposed Annual Traffic Adjuster conflicts with the revenue requirement formula established by Final Order 09 and its resulting incentives for efficiency.
- 436 (22) The implications of the proposed Quarterly New Licensee/Retiree Adjuster are unclear and would likewise conflict with the efficiency incentives established by Final Order 09.
- 437 (23) PSP's proposed COLA adjuster would undermine incentives for efficiency and may result in potential windfalls in future years.
- 438 (24) The evidence does not provide justification for PSP's rapidly escalating general legal expenses.
- 439 (25) The evidence fails to show that Tabler and RedCloud consulting work is not completed, and the available evidence shows that future plans for consulting work reflect mere budgets or estimates.
- 440 (26) Metrics for pilot efficiency would be more appropriately established through a collaborative process or through a BPC proceeding.
- 441 (27) The evidence supports PSP's proposed restating adjustment for its PPP Loan forgiveness.
- 442 (28) Staff's proposal to update fuel costs is the most reasonable and consistent with Commission practice for other transportation industries.
- 443 (29) It is reasonable to average the costs of attending six different pilot training facilities given the lack of evidence of attendance trends.
- 444 (30) PSP does not provide evidence justifying its request to depart from long-standing practice and to reimburse pilots for a broader range of transportation expenses.
- 445 (31) PSP does not provide evidence addressing the concerns with affiliated interest transactions noted in Final Order 09.
- 446 (32) PSP's request for \$20,000 in DEI Outreach training expenses reflects known and measurable costs.

- 447 (33) PSP's request for expenses related to DEI Donations does not represent amounts properly recoverable in rates nor known and measurable costs.
- 448 (34) PSP should exclude the SILA surcharge from its proposed revenue requirement.
- 449 (35) PSP has not provided sufficient evidence of the implications of increasing the harbor shift charges and cancellation charge as it requests.
- 450 (36) The evidence supports creating a new tonnage class for vessels under 2,000 gross tons.
- 451 (37) The revenue requirement increase authorized in this Order will not result in rate shock for ratepayers.
- 452 (38) Invoicing vessels based on GT ICT provides a more accurate and consistent measurement of overall vessel size and the corresponding difficulty of piloting the vessel.
- 453 (39) GRT varies widely based on vessel design features.
- 454 (40) TOTE's vessel design and technological characteristics should not be a basis for continuing the historical practice of invoicing those vessels based on GRT.
- 455 (41) The evidence shows that TOTE should be refunded \$124,282.55 for the incremental difference in billing in 2021 and \$349,799.76 for 2022 for a total of \$474,082.31.
- 456 (42) PSP's currently effective rates do not provide sufficient revenue to recover the costs of its operations or provide for a fair compensation for pilot labor.

IV. CONCLUSIONS OF LAW

- 457 Having discussed above all matters material to this decision, and having stated the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:
- 458 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.
- 459 (2) PSP is an association of licensed pilots providing pilotage services subject to Commission jurisdiction.

- 460 (3) As a “[p]erson with a substantial interest” that filed a proposed tariff for pilotage services, as that term is defined in RCW 81.116.010, PSP has the burden to establish that the current tariff is not fair, just, reasonable, and sufficient. The Commission’s determination of whether the person with a substantial interest has carried its burden is adjudged based on the evidentiary record.
- 461 (4) PSP’s existing rates for pilotage services are not fair, just, reasonable, or sufficient and should be adjusted prospectively after the date of this Order.
- 462 (5) PSP’s proposal to increase rates by 42.3 percent, reflecting an overall increase of approximately \$15 million in annual revenues, will not result in rates that are fair, just, reasonable, and sufficient, and therefore should be denied.
- 463 (6) The Commission is required by statute to determine fair, just, reasonable, and sufficient rates for the provision of pilotage services.
- 464 (7) The “best achievable protection” standard has only indirect relevance to the rate-setting process insofar as it affects PSP’s cost of service.
- 465 (8) The Commission should not accept Lough’s compensation study as reliable evidence for purposes of determining pilot DNI.
- 466 (9) The Commission should increase pilot DNI upwards given significant recent inflation.
- 467 (10) Continuing the DNI methodology from Final Order 09 unchanged would unreasonably penalize PSP member pilots for temporary downturns in shipping traffic.
- 468 (11) The Commission should modify its methodology in Final Order 09 for purposes of this proceeding and approve a DNI of \$475,733 per funded pilot.
- 469 (12) The Commission should decline to adopt an income parity principle with respect to the Grays Harbor pilotage district.
- 470 (13) The Commission accounts for pilots’ exposure to risk by basing authorized DNI on past DNI distributions under the BPC tariff.
- 471 (14) The Commission has accounted for the relatively greater risk posed by larger vessels by adopting a rate design that places significant weight on the tonnage charge.

- 472 (15) The Commission should allow 56 pilots to be funded in tariff rates.
- 473 (16) The Commission should order PSP to submit status updates and other compliance filings as PSP seeks favorable determinations from the IRS and Department of Labor regarding its proposed MEP.
- 474 (17) The Commission should allow one-half of PSP's proposed pro forma adjustment for continuing its current pay-as-you-go pension plan in rates until PSP's next general rate case.
- 475 (18) The Commission should decline to reverse its decision in Final Order 09 that pilots are independent contractors who should fully fund medical expenses through DNI.
- 476 (19) The Commission should decline to approve any automatic tariff adjusters.
- 477 (20) PSP should be allowed to recover rate case specific legal expenses.
- 478 (21) PSP failed to meet its burden to justify recovery of rapidly escalating general legal expenses.
- 479 (22) PSP should not be allowed to recover expenses attributable to consulting work from Tabler and RedCloud at the present time.
- 480 (23) The Commission should decline to adopt any metrics related to pilot efficiency.
- 481 (24) PSP properly restates test-year results to reflect the forgiveness of its PPP Loan.
- 482 (25) The Commission should require PSP to update fuel costs, based on actual fuel costs over the most recent 12-month period available, in its compliance filing following the entry of this Order.
- 483 (26) The Commission should adopt Staff's proposed adjustment for pilot training expenses.
- 484 (27) The Commission should maintain the pilot transportation charge without change from Final Order 09.
- 485 (28) PSP should be allowed to recover \$20,000 related to DEI Outreach training.
- 486 (29) The SILA surcharge should be removed from PSP's tariff in its compliance filing following the entry of this Order.

- 487 (30) PSP’s revenue requirement increase should be applied as equal percentage increases to Tariff Items 300, 310, 350, 360, and 370 (except for “Carried Out of District Charge”).
- 488 (31) The Commission should approve a new tonnage class for vessels under 2,000 gross tons.
- 489 (32) Ratepayers should be charged consistent with the principle of cost-causation, not profitability of certain vessels or the profitability of certain segments in the shipping industry.
- 490 (33) Invoicing vessels based on GT ICT, rather than GRT, is more consistent with the principle of cost-causation.
- 491 (34) TOTE should be invoiced based on GT ICT on a prospective basis only.
- 492 (35) Allowing PSP to retain the deferred incremental difference in revenue collected from TOTE would allow it to benefit from providing the Commission with incorrect evidence and with failing to justify or explain significant tariff changes.
- 493 (36) PSP should be authorized and required to make a compliance tariff filing in this docket to recover its revenue requirement in prospective rates consistent with the findings in this Order.
- 494 (37) The Commission Secretary should be authorized to accept by letter, with copies to all parties in this proceeding, a filing that complies with the requirements of this Order.

V. ORDER

495 THE COMMISSION ORDERS THAT

- 496 (1) The Commission rejects the proposed tariff revisions Puget Sound Pilots filed in this docket on June 29, 2022, and which the Commission suspended by prior order.
- 497 (2) The Commission authorizes and requires Puget Sound Pilots to make a compliance filing in this docket including all tariff sheets as necessary and sufficient to effectuate the terms of this Final Order. The stated effective date in

the compliance filing tariff sheets must allow five business days after the date of filing for Staff's review.

- 498 (3) The Commission Secretary is authorized to accept by letter, with copies to all parties, a filing that complies with the requirements of this Final Order.

DATED at Lacey, Washington, and effective August 10, 2023.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chair

ANN E. RENDAHL, Commissioner

MILTON H. DOUMIT, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.