

September 14, 2018

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Re: Docket TP-180402, Comments on Marine Pilotage Ratesetting; Procedural Rules 480-07 and Pilotage Rules 480-160

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Dear Mr. Johnson:

Puget Sound Pilots ("PSP") appreciates the opportunity to provide specific comments in response to Docket TP-180402 of August 10, 2018 and the Commission's Notice of Opportunity to Comment by September 14, 2018. On behalf of PSP, the undersigned submits these comments regarding the draft rules and looks forward to participating in the stakeholder session expected to be held later next month.

## COMMENTS ON DRAFT PILOTAGE RATE CASE PROCEDURAL RULES

### Comments on Specific Sections

#### WAC 480-07-505(4) Exceptions to General Rate Case Filings

PSP believes that two additional exceptions should be included in the general rate case filing exceptions.

(f) Filings seeking to recover increases or reflect decreases in state, local or federal taxes or fees applicable to pilotage services.

(g) Filings seeking to revise previously approved revenue requirements to adjust the number of approved pilots.

Making these affirmative statements will underscore that those highlighted acts or benchmark should not, in and of themselves, trigger a general rate filing.

**WAC 480-07-525:** We also have a number of additional comments on this omnibus new section.

1. In **WAC 480-07-525(1)**, “Testimony and Exhibits,” we suggest the draft rule be revised to read:

(1) Testimony and exhibits. If the commission enters a suspension order for a proposed tariff, in accordance with a scheduling order entered by the Commission, the petitioner must file with the commission one paper and one electronic copy of all testimony and exhibits that the petitioner intends to present as its direct case in the format identified in WAC 480-07-140(6). if the filing is suspended and a hearing held. Upon request by the Commission for a paper copy of any electronically filed testimony or exhibit, one paper copy of the direct case or original filing shall be provided within three (3) business days.

This proposed rule revision incorporates the concept that, as with many Title 81 cases, prefiled testimony and other advocacy pleadings need not necessarily be submitted at the outset of a filing of a general rate case. However, it also requires the petitioner to supplement the initial filed case should the Commission act to suspend the filing for a full adjudicative proceeding in accordance with a scheduling order as is typically issued.

2. We suggest that draft **WAC 480-07-525(4)**, “Work papers,” be revised as follows:

(4) Work papers. One paper and one electronic copy of all supporting work papers for the test period, which is the most recent twelve-month period for which financial data are available not to exceed nine months prior to the filing date. The electronic copy must be submitted in the format identified in WAC 480-07-140(6). If paper copies are requested by the Commission, they will be provided within three (3) business days.

Work papers must include: . . . .

The first suggested deletion would subject paper copy submissions to express requests by the Commission. In other words, the recent trend in the last two or so years has been for fully electronic case filings for the ease of audit and reference by all other interested parties. The paper copy requirement can also be quite voluminous due to oversize spreadsheets and other supporting documentation, testimony and exhibits. This would only be required if requested by the staff or Commission.

The second suggested deletion would remove a finite limitation to the age of the financial data whose proposed concise limitation is unprecedented under current general rate case rules for transportation companies. PSP believes that fixing any such date would be inflexible and not accommodate any anomalies or variations in results of operations which might subject compilations of data to delay. PSP also believes there are occasions in which nine months would be too little time or potentially too much time, demonstrating why an absolute chronological limitation on the age of the supplied data is not

recommended. PSP recommends leaving the time frame to staff discretion on a case-by-case basis without a specifically defined time frame rule being established.

3. We suggest that the reference to “rate base” in **WAC 480-07-525(4)(a)** regarding “Schedule of assets” be deleted.

(a) Schedule of assets ~~(rate base);~~

While PSP supports this requirement to call for a schedule of assets in asking for a depreciation schedule, any reference to “rate base” could be confusing or subject to correlation with return on rate base methodology which is not an appropriate comparator for pilotage services rate regulation.

4. We also suggest deleting the requirement that an income statement and balance sheet be prepared by a certified public accountant. **WAC 480-07-525(4)(c)**:

~~(c) An income statement and balance sheet audited by a certified public accountant with a year ended date not to exceed nine months prior to the date of filing.~~

Although PSP has consistently prepared an annual CPA-audited financial statement for the Board of Pilotage Commissioners, it does not believe a formal audited financial statement should necessarily be a requirement of the Commission, nor should there be a year ending date not to exceed nine months from the date of filing. PSP raises the same concerns here on the “stale date” issue as it did on subparagraph (4), above. Moreover, as noted, a requirement for *audited* financials is unprecedented for Title 81 general rate case filings. The latter requirement, coupled with a nine-month maximum age for income statements and balance sheets, also portend of a possible need for updated, non-calendar year audited financials which could balloon the cost of rate case preparation and subsequently increase costs for consumers of pilotage services.

5. As there is no “non-regulated revenue” derived from pilotage services, PSP recommends deleting draft **WAC 480-07-525** subparagraphs **(g)** and **(h)** in their entirety.

~~(g) If non-regulated revenue represents more than ten percent of total test period revenue, a detailed separation of all revenue and expenses between regulated and non-regulated operations.~~

~~(h) A detailed list of all non-regulated operations, including the rates charged for the services rendered. Copies of all contracts must be provided on request.~~

6. We believe that proposed **WAC 480-07-525(4)(j)** is confusing and an apparent duplication of the requirement in proposed **WAC 480-07-525(1)**. Subsection **(4)(j)** provides:

(j) At the time the petitioner makes its general rate case filing, the petitioner must provide to Commission staff one paper and one electronic copy of all supporting work papers of each witness in a format as described in this subsection. If the testimony, exhibits, or work papers refer to a document, including, but not limited to, a report, study, analysis, survey, article or decision, that document must be included as a work paper unless it is a reported court or agency decision, in which case the reporter citation must be provided in the testimony. If a referenced document is voluminous, it need not be provided, but the petitioner must clearly identify the materials that are omitted and their content. Omitted materials must be provided or made available if requested.

PSP understands the need for electronic copies of all supporting work papers for witnesses where pertinent and also makes the same observation about the paper copy requirement noted above as well. It believes that subparagraph (j), as proposed, is also likely largely subsumed by the requirement at subparagraph (i) above, and appears to contradict the recognition in WAC 480-07-505 that not all rate filings trigger contested general rate case adjudicative proceedings. In any event, if the Commission retains this proposed paragraph, we suggest it clarify in the last line that the requests for omitted materials must be requested by the Commission.

7. PSP is particularly concerned about the draft language in **WAC 480-07-525(4)(m)**, which provides:

(m) Projected changes in vessel traffic and a detailed portrayal of vessel traffic for the previous twelve months along with the associated tariff and fees charged to vessel operators for pilotage services as required in WAC 480-160.

We propose the following replacement language for subparagraph (4)(m):

(m) Projected 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 and any other information deemed relevant by the petitioner.

While the PSP clearly has data on “vessel assignments,” vessel *traffic* projections are in the possession of the shipping companies and other industry groups who order or arrange pilot services and thus, requiring projections of changes in vessel shipping patterns on the part of PSP as the rate proponent is

misplaced. PSP has no objection to documenting, for the test period, “rates and charges assessed vessel operators” in that interval and would intend to provide that as a necessary part of its rate filing.

8. Regarding **WAC 480-07-525(4)(o)**, we believe projected increases in state, local or federal fees and/or taxes should be supplied so long as they are known and measurable at the time a pilotage services rate case is filed unless the new exceptions in the proposed change in WAC 480-07-505 are applicable.

9. For **Subparagraph (p)**, regarding annual costs of any major capital or other extraordinary expenses, PSP believes this is basically a pro forma adjustment requirement and, as such, is not concerned with providing projected extraordinary expense items if that is what is intended by the language.

10. Draft rule **WAC 480-07-525(q)** provides for work papers that present the following:

(q) Revenues generated by tariff and fees for the previous year, the current year’s budget and future budget projections, based on projected vessel traffic, vessel type, vessel tonnage, routes and number of pilots.

This appears to be an amalgamation and possible duplication of subparagraphs (m) and (n) above and is subject to the same objection above on “vessel traffic” as opposed to “vessel assignments” noted above.

11. **WAC 480-07-525(4)(r)** proposes:

(r) Necessary tariff surcharge to fund the stipend the board of pilotage commissioners is authorized to pay to pilot trainees and to use in its pilot training program under RCW 88.16.035.

PSP assumes that because subparagraph (r) is duplicated earlier in **WAC 480-07-505(4)(b)**, the reiteration in this subpart of the draft rule is to ensure that general rate case filings likely headed to formal adjudication include provision for stipends set by the Board of Pilotage Commissioners, as required for the pilot training program and pilot trainees.

12. Finally, we have a brief comment on draft **WAC 480-07-525(4)(s)** of the work paper rules which mandates demonstration of ratemaking methodology changes for adjustments. PSP believes this is a well-considered addition to the general rate case work paper requirements that would put all stakeholders on notice when a petitioner intends a different methodology than past Commission orders have recognized. This will prevent surprises on treatment of adjustments with previously untested

approaches and allow for a forum for justification of a change in an underlying methodological approach.

## COMMENTS ON DRAFT SUBSTANTIVE RULES/PILOTAGE GENERAL WAC 480-160

### General Comments

PSP appreciates the thoroughness of the proposed pilotage general definitional rules. However, never having adjudicated a rate proceeding before the UTC, PSP believes that it would be more appropriate and provide the Commission with greater flexibility in the future if certain terms were defined only within a proposed tariff or defined only after the first general rate case. The specific definitions that PSP proposes be removed from the definitional rules are identified in greater detail below and in Appendix A.

### Comments on Specific Sections

#### 1. WAC 480-160-006 Application.

PSP proposes revisions to WAC 480-160-006 that more closely mirror the language employed in RCW 88.16.070, including subpart (3) which is the statutory basis for compulsory pilotage in Washington:

Except for ~~the~~ vessels exempted under RCW 88.16.070, all every vessel that operates in the waters of the Puget Sound pilotage district or Grays Harbor pilotage districts ~~that must~~ shall employ a marine pilot licensed under the provisions of RCW 88.16.090 and shall be ~~are~~ liable and pay for pilotage rates ~~or~~ and charges in accordance with the applicable tariff and subject to compulsory pilotage.

#### 2. WAC 480-160-011 Resolving disputes about the meaning of these rules

Proposed rule WAC 480-160-011 provides as follows:

If the interpretation of any rule in this chapter is questioned by a petitioner, a customer, or an applicant, a petition for declaratory ruling under 34.05.240 or request for clarification may be filed with the commission.

It is unclear what is meant by “a request for clarification” as this is not a clearly defined procedure set out in the rules, at least before a Final Order is issued. Thus, PSP recommends the rule either be revised as follows, clarified to conform to identified procedural rules that should be referenced in WAC 480-160-011, or if an alternative informal procedure is proposed, additional clarification and elaboration be included:

If the interpretation of any rule in this chapter is questioned by a petitioner, a customer, or an applicant, a petition for declaratory ruling under 34.05.240 ~~or request for clarification~~ may be filed with the commission.

As an additional comment on this proposed rule, the term “file with the commission” is defined in proposed WAC 480-160-016(10). That definition, if adopted, means “filed with the commission’s executive secretary... at the time a person with a substantial interest *files its general rate case.*” (emphasis added). This definition would appear to limit a “request for clarification” to one being filed with a general rate case. However, general rate case adjudications are typically initiated on the suspension of a filed tariff. If the “request for clarification” language is not eliminated from this proposed rule, we recommend revisions to the definition of “file with the commission” in proposed WAC 480-160-016(10).

### 3. WAC 480-160-016 Definitions

As noted, PSP believes that until a general rate proceeding has been fully adjudicated by the Commission, only certain terms need at least be defined in the rules. Other terms may be defined in the tariff or, if necessary, after a final order is issued in the first general rate proceeding. Therefore, we suggest that only the following definitions be included in the proposed WAC 480-160-016:

(6) “Board”

(9) “Commission”

(10) “File with the commission”

(11) “Grays Harbor pilotage district”

[new] “Grays Harbor pilots”

(18) “Person with a substantial interest”

[new] “Pilotage service provider”

- (20) "Puget Sound pilotage district"
- (21) "Puget Sound Pilots"
- (22) "Rates" and "charges"
- (23) "Rate design and rate structure"
- (26) "Serve" or "provide"

Our comments and proposed revisions to those definitions, if any, are set forth below. All other comments and suggested revisions to the proposed definitional rules, which are offered without waiver of PSP's recommendation that no definition be implemented in the rules at this time, are set forth in Appendix A to this correspondence.

a. **Puget Sound Pilotage District**

With respect to the definition of "Puget Sound pilotage district" in proposed WAC 480-160-016(20), PSP recommends a minor change to the use of symbols for degrees and minutes, which are traditionally used to denote the value of degrees and minutes in numeric format.

(20) "**Puget Sound pilotage district**" shall have the same meaning as found in RCW 88.16.050(1) to include all the waters of the state of Washington inside the international boundary line between the state of Washington and the province of British Columbia and east of one hundred twenty-three degrees twenty-four minutes (123° ~~degrees~~ 24' ~~minutes~~) west longitude.

b. **Pilotage Service Provider**

There are a number of places in the proposed pilotage rules in which the term "pilotage district" is used. However, a pilotage district, as defined in RCW 88.16.050, is a geographic area rather than a service entity. Thus, PSP proposes the following new term, "pilotage service provider," be included in the definitions set forth in proposed WAC 480-160-016 and the term replace "pilotage district" where used in a number of proposed rules to reference the Port of Grays Harbor pilots and the Puget Sound Pilots who provide the pilotage services in district waters:

"**Pilotage service provider**" means the Puget Sound Pilots or Grays Harbor Pilots.

c. **Grays Harbor Pilots**



The proposed rules include a definition of “Puget Sound Pilots” but lack a definition of Grays Harbor Pilots. Because the proposed definition of “Pilotage service provider” necessarily references the Grays Harbor Pilots, PSP proposes the following definition of that term:

“Grays Harbor pilots” refers to Port of Grays Harbor employees licensed by the state to provide compulsory pilotage service in Grays Harbor pilotage district waters.

#### **4. WAC 480-160-031 Records retention.**

A pilotage district is a geographic area rather than a service provider. PSP thus recommends revising the rule to acknowledge that the person with the obligation to retain records is the service provider. PSP also makes a recommendation for record retention that permits additional options and flexibility because PSP presently maintains records for service and billing in electronic format which increases the efficiency of its operations. However, the proposed record keeping requirement that customer service records be “kept in alphabetical, service address, or service route order” in WAC 480-160-016(2)(b) is not compatible with the electronic record keeping system utilized by PSP. Thus, we recommend adding an option to maintain records in searchable electronic format as shown below. Additionally, the terms “services” and “extra services” are not defined, but appear to reference the language in RCW 81.116.020. The statute should therefore be referenced in the rule in the following proposed revision:

- (1) General provisions.** A pilotage ~~district~~ service provider must keep all business records and reports for at least three years following the date those documents were created unless specified in these rules or unless a longer retention period is required by another governmental body.
- (2) Customer service records.** A pilotage ~~district~~ service provider must maintain complete and accurate customer service records for all customers served.
  - (a) Customer service records must be kept on file in the general office of the petitioner for at least three years.
  - (b) Customer service records must be kept either in searchable electronic format, or in alphabetical, service address, or service route order.
  - (c) Customer service records must show at least the following information:
    - (i) The name and service address of the customer;
    - (ii) The billing address of the customer, if different than the service address;
    - (iii) Categories and quantity of pilotage service provided, including extra services authorized by RCW 81.116.020(4), as they are provided;
    - (iv) Information required to provide, on customer request, a detailed description of the amount billed the customer;
    - (v) Amounts billed;

- (vi) Amounts collected; and
- (vii) Balance due.

## 5. WAC 480-160-036 Reporting Requirements

In WAC 480-160-036, PSP recommends minor revisions to again reflect that a pilotage district is merely a geographic area rather than the service provider. The revisions are reflected as follows:

### NEW SECTION

#### WAC 480-160-036 **Reporting requirements.**

- (1) **Annual reports.** An annual report is an end-of-the-year summary of financial activity that each pilotage ~~district~~ service provider is required to file with the commission.
  - (a) Each year the commission will make available on the commission website an annual report form and instructions to each district.
  - (b) A pilotage ~~district~~ service provider must file a complete, accurate annual report showing all requested information by May 1 of the succeeding year. Information provided on the annual report must be consistent with source documents maintained at ~~district~~ pilotage service provider offices.
  - (c) The commission may grant an extension of time allowing a pilotage ~~district~~ service provider to file its annual report after the May 1 due date if the commission receives a request for extension before April 15.
  - (d) The commission may issue penalty assessments if a ~~district~~ pilotage service provider fails to file its required annual report by May 1.
- (2) **Other reports.** The commission may require a pilotage service provider to file periodic or other special reports.

## 6. WAC 480-160-062 Tariffs and rates, general

Proposed WAC 480-160-062 sets forth general rules regarding the use of tariffs by marine pilots within their respective pilotage districts. Thus, the provision in WAC 480-160-062(4) recognizing the right of a party with a substantive interest to petition to change a tariff appears to be misplaced. This provision is also duplicative of the more comprehensive tariff-changing procedure set forth in proposed WAC 480-160-070. PSP recommends that this subsection (4) be deleted.

Proposed subsection (5) states “any proposed changes must be provided using the commission provided electronic template.” Because electronic tariff templates are frequently adopted by the UTC without a general rate proceeding, this proposed rule appears to unintentionally permit the UTC to adopt substantive tariff rules through use of a mandatory template. PSP recommends this unintended consequence be avoided through the following revision:

- (1) A tariff is a publication containing the rates and charges for pilotage services, including rules that govern how rates and charges are assessed.
- (2) The commission publishes the tariffs that marine pilots serving the Puget Sound and Grays Harbors pilotage districts must use.
- (3) All jurisdictional marine pilots are required to follow the terms, conditions, rates and all other requirements imposed by the respective commission-published tariff.
- ~~(4) Any party with substantive interest may petition the commission to update or modify the published allowed rate and charges or the rules and regulation contained within the appropriate pilotage tariff.~~
- (5) Any proposed changes must be provided using a format substantially similar to the commission-provided electronic template.

#### **7. WAC 480-160-041 Commission compliance policy.**

WAC 480-160-041 also includes a reference to the pilotage district when it would be preferable that it include reference to the newly proposed definition of “pilotage service provider.” PSP also proposes a clarification that places the compliance obligations on the association or service entity rather than individual pilots.

##### NEW SECTION

#### **WAC 480-160-041 Commission compliance policy.**

- (1) The commission encourages voluntary compliance with statutes, rules, and commission orders.
- (2) The commission will enforce statutes, rules, and commission orders through:
  - (a) A program emphasizing education and technical assistance.
  - (b) A compliance program including:
    - (i) Investigation and resolution of complaints;
    - (ii) Economic compliance audits including, but not limited to, rates, charges, and billing practices;

- (iii) Cooperative agreements with other agencies to enable effective enforcement and appropriate use of resources.

(3) Where necessary to ensure compliance with statutes, rules, and commission orders, the commission will pursue administrative actions with the intent of ensuring future compliance by the violating pilotage ~~district~~ service provider, including, but not limited to, warnings, sanctions, or penalty assessments under the provisions of chapter 81.04 RCW.

(4) When pilots provide pilotage service in relation to a voluntary association or other service entity, compliance with WAC 480-160-031 (records retention), 48-160-036 (reporting requirements) and 480-160-101 (complaints) shall be the obligation of the association or service entity rather than the individual pilots.

#### **8. WAC 480-160-070 Changing commission-published tariff - Puget Sound pilotage district**

Proposed WAC 480-160-070 sets forth a procedure for filing a revised tariff with the commission. The provision set forth in the proposed rule, however, appears to be inconsistent with the express statutory provisions of RCW 81.116.030(4) that causes a tariff to become effective as a matter of law unless, within thirty days of its filing, the commission suspends the tariff. To acknowledge such “deemed” approval, PSP recommends the following revision to WAC 480-160-070:

- (1) A person with a substantial interest may petition for changes to the commission’s pilotage tariff, in addition, the commission may, on its own motion, propose tariff changes.
- (2) Parties may file electronically their proposed changes using the commission's records portal.
- (3) Proposed changes must:
  - (a) Be on the appropriate page(s) from the commission’s tariff template or a form substantially similar thereto.
  - (b) Identify the tariff item to be changed.
  - (c) Fully describe the proposed change.
  - (d) State clearly the reason(s) for the proposed change.
  - (e) Include any information or documents that justify the proposed change.
  - (f) Provide name, title, address, telephone number, email address of the proposer.
- (4) Upon its stated effective date if not suspended by the commission, or if the commission suspends the tariff upon the stated date of the commission-ordered revised tariff once the commission issues an order revising the Puget Sound pilotage district tariff, it will state the date on which the rates become effective. The commission will provide a copy of the commission’s updated tariff in electronic format to the Puget Sound pilotage ~~district~~ service provider.

## 9. WAC 480-160-101 Complaints – Rates and Charges.

Remaining consistent with the proposed modifications above, PSP recommends that the words “pilotage district” be modified to recognize that the service provider, not the pilotage district, is responsible for service. Thus, PSP recommends that WAC 480-160-101 be revised as follows:

### (1) **Pilotage ~~district~~ service provider responsibility.**

- (a) **Complaints from customers.** When a pilotage ~~district~~ service provider receives a complaint from a customer or an applicant concerning rates or charges, it must:
  - (i) Acknowledge the complaint;
  - (ii) Investigate the matter promptly;
  - (iii) Report the results of the investigation to the complainant;
  - (iv) Take corrective action, if warranted, as soon as appropriate under the circumstances;
  - (v) Inform the complainant that the decision may be appealed to a higher-level representative of the pilotage ~~district~~ service provider, if any;
  - (vi) Inform the complainant, if still dissatisfied after speaking with the higher-level representative, of the commission's availability for review of the complaint; and
  - (vii) Provide the complainant with the commission's mailing and email addresses and toll-free telephone number.
- (b) **Complaint referred by commission.** When commission consumer protection staff refer an informal complaint regarding rates or charges to the pilotage ~~district~~ service provider, the pilotage ~~district~~ service provider must:
  - (i) Investigate and report the results to the commission consumer protection staff within two business days (the commission consumer protection staff may grant an extension of time for responding to the complaint if requested and warranted);
  - (ii) Keep the commission consumer protection staff informed of progress toward the solution; and
  - (iii) Inform the commission consumer protection staff of the final result.
- (c) **Complaint record.** A pilotage ~~district~~ service provider must keep a record of all complaints concerning rates or charges for at least one year. The record of complaints and rates must be made readily available for commission review. The record must contain:
  - (i) The complainant's name and address;

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- (ii) Date and nature of the complaint;
  - (iii) Action taken; and
  - (iv) Final result.
- (2) **Complaints to commission.** Applicants, customers, or their representatives may file with the commission either:
- (a) An informal complaint against the pilotage-~~district~~ service provider under the provisions of WAC 480-07-910; or
  - (b) A formal complaint against the pilotage-~~district~~ service provider under the provisions of WAC 480-07-370.

Thanks again for this opportunity to comment on the proposed rule adoptions. We look forward to participation in the upcoming stakeholder session.

Yours truly,



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## APPENDIX A

As noted, PSP believes that a number of the proposed definitional rules should be defined only in tariff or after the first general rate proceeding is completed. Nonetheless, some of the proposed definitional rules would benefit from additional clarification and revision. Thus, PSP offers the following comments on those proposed definitions merely to provide input on the terminology without suggestion that the definitions should be adopted as rule at this time.

### **1. Assignment**

The definition of "Assignment" in proposed WAC 480-160-016(1) would benefit from additional clarification as to what travel time is considered part of an assignment. Thus, PSP proposes the word "pilot" be inserted as follows:

- (1) "**Assignment**" means a billable event relating to pilotage services.
  - (a) Assignments include ship movements, regardless of duration, and cancellations.
  - (b) For purposes of work allocation, an assignment is considered to commence when a pilot is assigned a vessel and concludes upon the pilot's arrival at the pilot station on an outbound assignment or upon the completion of pilot travel for an inbound assignment (or upon cancellation).

### **2. Average assignment time per ship movement and Average time per assignment**

The concept of "assignment time" is discussed in subparts (a) and (b) of the definition of "Average assignment time per ship movement" in WAC 480-160-016(2) and is repeated in subparts (a) and (b) in the definition of "Average time per assignment" in WAC 480-160-016(5). It would be simpler if "Assignment Time" had its own definition. In that regard, "assignment time" should mean: "the period of time generally commencing when the pilot is assigned to the vessel and concluding upon completion of pilot travel time for inbound assignments or arrival at the pilot station for outbound assignments. Assignment time includes preparation and pilot travel time plus bridge time."

Apart from separating "Assignment time" into a new definition to avoid redundancy, the definition of "assignment time" should include the word "pilot" to clarify what travel time is referenced as reflected below. Additionally, the term "assignment time" should be included in the modified definitional rules as shown:

(2) **“Average assignment time per ship movement”** means the sum total of ~~time devoted to~~ assignment time during a given period divided by the number of ship movements occurring during the same period.

~~(a) Assignment time generally commences when the pilot is assigned to the vessel and concludes upon completion of travel time for inbound assignments or arrival at the pilot station for outbound assignments.~~

~~(b) Assignment time includes preparation and travel time plus bridge time.~~

(5) **“Average time per assignment”** means the sum total of ~~time devoted to~~ assignments time during a given period divided by the number of assignments occurring during the same period.

~~(a) Assignment time generally commences when the pilot is assigned to the vessel and concludes upon completion of travel time for inbound assignments or arrival at the pilot station for outbound assignments.~~

~~(b) Assignment time includes preparation and travel time plus bridge time.~~

### **3. Average bridge time per assignment, average bridge time per ship movement and bridge time**

Similarly to “assignment time,” PSP recommends a separate definition of “bridge time” rather than including a description of bridge time in the definitions of “average bridge time per assignment” and average bridge time per ship movement.” Thus, PSP recommends the Commission modify those terms and add an the following appropriate definition of bridge time that was previously omitted from proposed WAC 480-160-016(7):

(3) **“Average bridge time per assignment”** means the sum total of bridge time ~~a pilot is aboard~~ piloted vessels during a given period divided by the number of assignments occurring during the same period.

~~(a) Bridge time generally commences concurrent with order time and concludes upon the pilot’s arrival ashore.~~

~~(b) Although pilots normally arrive on the bridge 30 minutes before the order time on outbound assignments, average bridge time per assignment does not include bridge time for cancelled assignments nor time on the bridge before order time of outbound assignments.~~



(4) **“Average bridge time per ship movement”** means the sum total of bridge time aboard piloted vessels during a given period divided by the number of ship movements occurring during the same period.

~~(a) Bridge time generally commences concurrent with order time and concludes upon the pilot’s arrival ashore.~~

~~(b) Although pilots normally arrive on the bridge 30 minutes before the order time on outbound assignments, average bridge time per ship movement does not include time on the bridge for cancelled assignments nor time on the bridge before order time of outbound assignments.~~

(7) **“Bridge time”** means the period of time that commences at the pilot order time for the vessel and concludes upon the time of the pilot’s arrival ashore.

#### 4. Cancellation

PSP believes that due to the variations in the geographic territories that comprise each pilotage district, it would make sense to permit the application of a different cancellation definition to each pilotage district and therefore recommends that cancellation be defined by the entity proposing a tariff.

Nonetheless, PSP notes that the proposed rule appears to apply only to the Puget Sound Pilotage District and if adopted over PSP’s recommendation, it should be expanded or clarified to address each pilotage district separately. As to the provisions applicable to the Puget Sound Pilotage District, PSP makes the following suggested revisions to clarify and elaborate on the proposed definition to address the difference in inbound and outbound transits, to include a cancellation provision that applies to service other than inbound or outbound transits, to adjust the notice time frames to fit current operating conditions, and to simplify cancellations further by removing subpart (c) as it relates to comparing cancellation charges to standby charges, which creates an administrative burden on the pilots:

(8) **“Cancellation”** means a billable event involving the termination by a carrier, master or agent of a pilotage service request after a pilot has been assigned and before an outbound ship is moved or, in the case of an inbound vessel, the vessel is delayed by more than six hours where that delay occurs within ~~12~~ 24 hours of the scheduled arrival time.

(a) ~~(a) For inbound transits, a~~ A cancellation is deemed to occur if a pilot has been assigned and if the service request is cancelled within ~~12~~ 24 hours before the scheduled vessel arrival at Port Angeles or, for outbound transits and all other service requests,

within ~~four~~ 12 hours from scheduled departure or movement from ~~Seattle, or five hours~~ ~~from any other~~ port.

(b) ~~(b)~~ A pilot who has not commenced travel to an outbound assignment at the time of cancellation remains available for immediate dispatch. A pilot who has commenced travel is removed from dispatch until rest requirements are met.

(c) ~~(c)~~ ~~An inbound vessel may be charged a cancellation charge for any delay of more than six hours of an arrival time made less than 12 hours before the scheduled arrival if the cancellation charge is lower than the delayed arrival charge that would otherwise apply.~~

## 5. Net Income of Pilots

PSP also recommends clarification in the definition of “Net Income of Pilots” in WAC 480-16-016(14). The proposed changes are intended to more accurately describe the principle defined by correctly describing the service to which rates apply and the geographic area in which those rates apply and to avoid unintentional difficulties in interpreting the distinctions between licensed and active pilots.

(14) “**Net Income of Pilots**” means, for purposes of setting rates for pilotage service in the Puget Sound pilotage district ~~Puget Sound Pilots~~, the total pilotage fees collected in the ~~port~~ Puget Sound Pilotage District, minus reasonable operating expenses, divided by the number of licensed ~~and or~~ active state pilots within the pilotage district.

## 6. Non-revenue activity

While PSP believes that non-revenue activity is an important concept in rate setting for pilots, as non-revenue activity requires significant pilot time away from assignments, PSP prefers to avoid inclusion in this initial rulemaking so that terminology may be defined through the general rate proceeding, in tariff, or in a subsequent rulemaking. Additionally, the rule includes a specific reference to the “president of the Puget Sound Pilots,” but the term “non-revenue activity” may also apply to the Grays Harbor pilots and thus should reflect its equal application. In remaining consistent with other proposed modifications to the definitions included in proposed WAC 480-160-016, PSP recommends that the terminology be made less specific to PSP and apply to any association of pilots:

- (5) **“Non-Revenue Activity”** means a non-billable event in which a pilot, other than the president of ~~the Puget Sound Pilots~~ a pilotage service provider, is assigned to such as a license upgrade trip or pilotage-related activity not involving a ship movement.
- (a) Non-revenue activities include education, training, simulation sessions, license upgrade trips, voyage planning sessions, meetings with government agencies and officials (e.g., board, commission, U.S. Coast Guard, Department of Ecology, legislature, governor, port districts, testimony, industry events and conferences, marine safety meetings and PSP pilotage service provider business meetings and similar professional activities meetings.
- (b) Non-revenue activities are not assignments and do not accrue towards the fulfillment of the ~~target~~ maximum safe assignment level.

## 7. Number of Pilots

As with all of the proposed definitions commented upon in this appendix, PSP believes that the term “number of pilots” is raised prematurely in this rulemaking and would be better addressed in the general rate proceeding. To the extent it need be considered at this time, PSP notes that a similar issue with respect to the definition of “Non-revenue activity” exists within the definition of “Number of pilots.” Thus, PSP recommends making revisions as reflected below. PSP also believes that subpart (b) is not helpful or accurate with respect to identifying the number of pilots.

- (6) **“Number of pilots”** means number of pilots necessary to be licensed in each district of the state to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district, as determined by 88.16.035 RCW.
- (a) The Number of Pilots includes:
1. Active pilots;
  2. The president of ~~the Puget Sound Pilots~~ a pilotage service provider and licensed pilots who are inactive due to injury or illness but receiving ~~payments~~ compensation.
- ~~(b) Number of Pilots does not include former pilots who are no longer licensed, but are receiving payment in the form of Comp. Days.~~

## 8. Target assignment level

Proposed WAC 480-160-016(28) includes a definition of “Target assignment level” that is overly simplistic in failing to account for risks to the public and pilot safety. The pilots are currently subject to a minimum rest period between assignments intended to avoid pilot fatigue and the correspondent risk

of a fatigue-caused incident. Based upon a fatigue study presented to the Board of Pilotage Commissioners (“BPC”), and at the BPC’s Fatigue Management Committee’s request, the BPC recently submitted an Agency Proposal recommending lengthening the mandatory rest interval. This may ultimately impact the level of assignments each pilot may safely handle. Thus, PSP recommends striking the definition of “Target Assignment Level” and replacing it with the following “Maximum Safe Assignment Level” terminology:

~~(28) “Target assignment level” means a numerical benchmark set by the board calculated by dividing the annual number of assignments by the number of pilots. It is used by the board in making workload decisions, including the setting of the number of pilot licenses to be issued. The president of Puget Sound Pilots is not included in the calculation for the Target Assignment Level.~~

(28) “Maximum safe assignment level” means a numerical benchmark that represents the maximum number of assignments a pilot may carry out in a year, taking into consideration the workload of the pilots in a given pilotage district and the total number of hours of rest required to prevent pilot fatigue.