BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND PILOTS, Respondent.	Docket No. TP-

TESTIMONY OF

WALTER S. TABLER

ON BEHALF OF PUGET SOUND PILOTS

NOVEMBER 19, 2019

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I. IDENTIFICATION OF WITNESS

Q: Would you please state your name, and business address for the record?

A: My name is Walter S. Tabler. My business address is 2600 Second Ave., #2004, Seattle, WA 98121.

Q: By whom are you employed?

A: I am self-employed by Tabler Consulting.

Q: Could you provide a brief background of your professional experience?

A: I was admitted to the bar in Washington in 1977. I served as an Assistant Attorney General in Olympia from 1977 to 1980 assigned to the Department of Transportation. One of the agencies I represented in the AG's office was the Board of Pilotage Commissioners (BPC). From 1980 until 2003 when I left Graham and Dunn, I was in private practice in Seattle. From 1980 to 1990, I represented various individuals in connection with pilotage matters. From 1991 to 2003, I was the lead outside attorney for the Puget Sound Pilots (PSP). In 2003, I became an employee of PSP as its Executive Director and General Counsel. I left PSP in 2015 and since then have been consulting on pilotage issues.

Q: In your various capacities, what involvement did you have generally and specifically what involvement in previous rate case submissions to the Board of Pilotage Commissioners?

A: While I was in the AG's office, I attended and advised the BPC on its rate hearings. While in private practice, my participation in rate hearings was more sporadic. During my tenure as Executive Director of PSP one of my job responsibilities was to prepare the submissions and conduct the annual rate hearings at the BPC.

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II. PURPOSE OF TESTIMONY

Q: Could you please state what the purpose of your testimony in this current proceeding then is?

A: Yes. I have been asked to address the background, history and mechanics of the district's retirement program for its pilots, give historical and operational background on the district's callback/comp day system and a brief description of the BPC tariff setting history. The callback system was developed many years ago to provide pilots to ships in a timely fashion during vessel traffic surges, seasonal peaks and periods of pilot shortages. Finally, I will briefly comment on previous patterns of rate case treatment at the BPC and similarities with the tariff proposal now being advanced by PSP in this proceeding.

III. RETIREMENT PROGRAM

Q: Could you please provide, based on your personal knowledge and experience, some basics on the PSP retirement program?

A: Yes. And in doing so, I would note that there is an actuarial witness, Steven Diess, testifying in this proceeding and thus my testimony will not be addressing any of the actuarial analytics of the retirement program which he is better qualified to address.

The retirement program for the Puget Sound Pilotage District is a pay-as-you-go program established by PSP, the Puget Sound Steamship Operators Association ("PSSOA") and the BPC in 1988 and 2001. (The PSSOA was the industry association representing ship operators in pilotage matters until 2005, when the Pacific Merchant Shipping Association ("PMSA") took over this representation). In its role representing industry, the PSSOA regularly appeared at BPC meetings on behalf of the shipping industry, negotiated rates and retirement plans with PSP, secured funding for retirement benefits for Grays Harbor

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pilots and represented the shipping industry in contested and stipulated rate hearings. The Puget Sound retirement plan provides a benefit to retired pilots based on years of service and the net income earned by the pilot averaged over their last three years of service. When originally put into place in 1988, the benefit was calculated at 1.25% per year of service applied to three years average target net income set by the BPC.

Q: Did this 1.25% benefit calculation change?

A: Yes. In 2001, PSSOA, Polar Tankers (a large operator of oil tankers in Puget Sound), and PSP agreed to increase the benefit to 1.5% per year of service. This increase in benefits was approved by the BPC in its 2001 rate hearing. In 2006, for the first time in my experience with the BPC, it did not establish a target net income as part of its tariff setting process. Without a target net income, there was no way to calculate benefits due under the plan as then written. The retirement plan was then changed to provide that if there was no target net income established by the BPC, actual net income for the relevant years would be used to calculate benefits.

Q: By that time, had the shipping industry representative changed?

A: Yes, by 2006, PMSA was representing the shipping industry in Puget Sound and declined to participate in discussions as to how the plan should be amended in the absence of a BPC established target net income.

Q: In your capacity as the former Executive Director of the PSP, did you also have occasion to research the history and/or the creation of the district's retirement program?

A; Yes, while at PSP, I supplemented my prior knowledge of the retirement plan history with an investigation of the regularly kept records of PSP in our office, the files at the BPC and various other legal resources.

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Q: First of all, do you agree with the characterization of the pilot program as a "pay-as-you-go" system?

A: Yes, the plan relies on current revenue provided by the tariff and generated by active licensed, working pilots to pay monthly retirement income to retirees or their surviving spouses. In that way, it operates much like the United States Social Security system by relying on the current workforce to fund the retirement of the previous workforce.

Q: In researching the implementation and/or background to the retirement program, what did you find?

A: Well, I performed basic research on the creation of the current district retirement program and the history of regulatory actions by the BPC in connection with pilot retirement. The order setting tariffs issued by the BPC on July 6, 1967 included a trust fund and/or pension fund contribution of $.15 per mile and provided that the funds collected could only be used for pension purposes and were payable upon the death or retirement of the pilot. This separate pension mileage charge remained a line item in the tariff and was increased over the years. BPC regulations continued to provide for retirement fund contributions to be made by pilots until such regulations were repealed immediately after the approval of the current retirement plan by the BPC in 1988.

Q: At the time the federal government passed ERISA or retirement income program bills in the 1970's for the first time giving favorable tax treatment to retirement plans, what did you find coincident with the ERISA legislation?

A: In 1975 and 1976, WAC 296-116-320 was amended to allow pension contributions to be deposited in trust programs containing only interest-bearing notes or fixed income accounts authorized by ERISA. Prior to this, funds had to be deposited in a joint bank account held by the pilot and the pilot association at an institution approved by the BPC.

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These newly allowed plans could not be terminated except upon the death or retirement of the pilot. Pilots and trustees were required to provide notice to the BPC of various activities in these accounts. For example, the BPC retained the authority to reverse an active pilot's withdrawal of funds from the account if one was attempted.

Q: What did you find next?

A: The tariff set in 1977 removed the itemized mileage charge (which was by then $.65 per mile) and provided that the retirement fund contribution was included in the LOA zone charges (a table of charges based on the length of the vessel and the length of the transit). The language referencing retirement fund contributions being included in the LOA table is still in the current version of the tariff at WAC 363-116-300. In January 1978, WAC 296-116-320 was amended to require that each active member of PSP make a retirement fund contribution of $750 per month for a full-time pilot and $375 per month for a half-time pilot. WSR 78-02-008. These funds were to be deposited in a bank account at an institution approved by the BPC or an authorized trust account.

Q: What was the next chronological change to the regulation in recognition by the Board of Pilotage Commissioners of the pilots' retirement plan?

A: In 1982, the BPC indicated that while there was still a need for retired pilots to have retirement income, the federal regulation of retirement accounts had become so comprehensive, that it was no longer necessary for the BPC to strictly control the handling of these accounts. In 1983, WAC 296-116-320 was amended to remove the earlier restrictions on the types of accounts into which the funds could be contributed.

Q: How did we get from a defined contribution approach from the 1960's to the early 1980's to the current defined benefit format?

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A: In the early 1980's, the pilots and PSSOA negotiated over the funding of the pilots' 1982 retirement program. This program provided that retired pilots would receive a benefit equal to 1% per year of service applied to an active pilot's income. For example, a pilot retiring after a 10-year career would receive a monthly benefit of 10% of whatever amount the then individual active pilots earned in the preceding month. In December, 1983, the pilots (then operating under the name of the Port Angeles Pilots) and the PSSOA entered a Memorandum of Agreement providing that they would jointly request the BPC to fund through the tariff the lesser of 80% of the preceding year's pension expense or $200,000.

Q: How did we get from the plan providing 1% per year of service applied to an active pilot's earnings to one providing a fixed benefit based on target net income?

A: Both the PSSOA and the pilots felt that the 1982 retirement plan could be improved. Because benefits fluctuated and were tied to current pilot earnings the potential liability exposure under the plan both to the pilots and to PSSOA was high. There was thus a desire to limit this liability and fix payments. There was also a desire by the pilots to get PSSOA and the BPC to agree to full funding of the retirement plan in the tariff. At the same time, the parties desired to retain the advantages of an unfunded plan which were: ease of administration, efficiency, transparency, no administrative costs, and no fiduciary duties or federal oversight. Every dollar spent on the retirement plan went directly to retirees or their surviving spouses. Retirement payments were reported to the BPC and the amount of the payments were approved by auditors as part of the annual audited financial statement. PSSOA and the pilots had not reached agreement on the terms of a new plan by the time of the December 1986 rate hearing. At that hearing, the BPC left in

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place the $200,000 ceiling but requested that PSP and PSSOA agree to "the development of a single, acceptable pension program prior to the next annual tariff hearing".

Q: What happened next?

A: Negotiations continued during 1987 and the pilots and PSSOA were able to agree on the framework of the current retirement program. The new program would be based on a percentage per year of service, but that percentage would no longer be applied to an active pilot's share to determine benefits. Rather, it would be applied to the average of the last three years of target net income. The pilots and PSSOA agreed that once payments started, they would be fixed, thus protecting industry from having to pay increased benefits to retirees as inflation and other factors increased active pilots' earnings. However, they were unable to agree on the exact percentage of target net income that should be credited per year of service and were unable to agree on a schedule to implement funding of the program by the tariff. At the December 1987 rate hearing, the BPC determined that the benefit would be funded at 1.25% per year of service of the average last three years of target net income and that tariff funding would start at 80% in 1988 and be eventually increased to 100% of the prior year's audited expenses by 1992. By establishing a five-year program to achieve full funding of the district's retirement plan, the BPC made clear its intent to fully fund the retirement plan thereafter into the future.

Q: Then what happened?

A: Subsequent to the BPC's decision, PSP voted to approve the new retirement plan. As the new plan represented a reduction in benefits and gave up any inflation protection, its approval was no by no means assured. (Estimates showed that benefits payable in the 10th year after the start of a new amended plan with a benefit calculated at 1.5% of

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average target net income per year of service would be 29% below those payable under the 1982 plan. The final version of the plan approved by the BPC set benefits at the lower percentage of 1.25%, even further reducing the costs). Nonetheless, the plan was adopted by the pilots and retirees and formally amended after the BPC's funding decision.

Q: What happened to the mandatory retirement fund contribution program that the BPC had had in place since 1967?

A: The BPC repealed the retirement fund contribution provisions of WAC 296-116-320 in April 1988, three months after approving the new plan. In its notice of intent to repeal, the BPC stated, "in keeping with the agreements made before the board relative to the implementation of a plan for structured funding of the Amended Port Angeles Pilots Retirement Program through the tariff, set in January 1988, this WAC is no longer necessary and the pilots now support its repeal." At the April 1988 hearing on this WAC, PSP supported the repeal as consistent with the "plan for structured funding of the Amended Port Angeles Pilots Retirement Program through the tariff, set in January 1988."

Q: How was the cost of the new plan funded?

A: From 1988 through the 1995 tariff hearing, the cost of the retirement program was funded as determined by the board in 1987. In 1996, the PSSOA, PSP and ARCO Marine (a large tanker operator with an interest in tariff matters) reached a comprehensive five-year Memorandum of Understanding using a formula to provide a joint tariff proposal to the BPC at each year's rate hearing. That MOU in turn provided for full tariff funding of the retirement plan expenses, again, based on audited expenses from the prior year.

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Q: What happened next?

A: The memorandum of understanding was extended for another five years in 2001 by way of agreement among PSP, PSSOA and Polar Tankers (successor to ARCO Marine). Exhibit WT-2. The 2001 MOU also included a negotiated increase in the retirement benefit from 1.25% to 1.5% for each year of service. In the joint proposal provided that "the adjustment is intend (sic) to cover all future PSP retirees." The agreement also provided for a retroactive increase in benefits to former PSP members or their surviving spouses in the amount of 20%. After the BPC's approval of these changes at the 2001 rate hearing, PSP again amended its plan to provide the increased benefits.

Q: How long did this agreement last?

A: This agreement governed tariff proceedings through 2005 and provided for full funding of the amended retirement plan. In 2006, the MOU had expired (PSP declined to renew it due to the need for a much larger rate increase than would have been provided by a continuation of the formula). In 2006 there was a contested rate hearing at which the BPC increased the tariff by 24% plus incidental increases (PMSA had suggested an increase of 3.46% plus incidental increases). Despite fundamental differences in how much a pilot should earn, all parties agreed in 2006 that the tariff should fund the full cost of the retirement program.

Q; What other events occurred at that time in 2006?

A: Also, at that hearing, for the first time in memory, the BPC did not set a target net income as part of making its ultimate rate decision.

Q: What were the complications from that?

A: The retirement plan set benefits as a percentage of a target net income set by the BPC. Because the BPC failed to set target net income at the 2006 hearing, there was no way to

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compute the amount of benefits payable to future retirees. PSP suggested to the industry representative, which by then was PMSA, an amendment that would most closely preserve the spirit of the agreement. In computing benefits, the proposal suggested substituting actual net income for target net income for years in which the BPC did not set a target net income.

Q: Did the PMSA subsequently participate in discussions about the benefit recalibrations?

A: PMSA refused to participate in any discussions about how the plan could be amended in the most minimal way and the pilots were forced to amend the plan without PMSA's involvement.

Q: Has the BPC ever required pilot associations to make payments under retirement plans?

A: Yes, in February 1991, the board enacted what is now WAC 363-116-315, compelling pilot associations to make any payments due under their retirement programs if the cost of the program was funded by the tariff. This WAC is still in effect. During my years representing and appearing before the BPC, it was clear to me that any failure of a pilot association to make payments due to retired pilots would be swiftly dealt with by the BPC.

IV. PSP RETIREMENT PLAN CHARACTERISTICS, COMPARATORS AND PERPETUATION

Q: With regard to the retirement plan design and features have you also looked into other pilotage district retirement plans in the country?

A: Yes. I have, particularly in preparation for some past presentations at the BPC.

Q: What did you generally find?

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A: I found that unfunded defined benefit plans are favored by pilot retirement plans across the country because they are the easiest and most transparent way to fund retirement. There are no administrative costs, there is no fiduciary duty responsibility nor other similar administration expenses. All dollars collected go directly to the retirees and their surviving spouses. While unfunded retirement plans are not practical for many businesses, they do work when revenues are controlled by tariffs and the tariff setting body has approved the plan. The assumption is that the tariff-setting body will continue to fund the pay-as-you-go liability and that if any changes are made to the plan, they will be agreed to by industry, the regulatory body and the pilots.

Q: Were you able to draw any other general comparisons?

A: Yes. The Puget Sound district's plan is less generous than almost all other plans in that it does not provide for inflation protection once payments have started. In other districts, the most common form of the plans provides the retiree a benefit based on a percentage of an active pilot's share of earnings. Thus, as earnings of active pilots change over the retiree's life span, so do retirement benefits. This has resulted in an increase in benefits over time in those districts as pilot income has increased. As noted, some other plans which are not based on an active pilot's earnings have cost-of-living increases.

Q: Do you view retirement plans as important in the context of recruitment to the district?

A: Absolutely. Deferred compensation/retirement income is a necessary component of pilot compensation and is a major factor in attracting pilots to the district to provide financial security for their retirement. Because of the extensive experience required to become a pilot, many pilot applicants are at an age where retirement considerations are compelling when they are deciding which pilotage districts to pursue. Most applicants have

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retirement plans in place in their current employment. Puget Sound is already at a competitive disadvantage on this front because its retirement plan is less generous than most. San Francisco, Los Angeles and even Grays Harbor have more generous plans to offer pilot applicants.

Q: Are there other reasons that pilot retirement plans are so prevalent in the industry?

A: Yes. Pilot retirement plans are an important component of the safety net provided by a vital and active pilotage service. While there is a mandatory retirement age of 70 for pilots in the state of Washington, it is in the public interest for many pilots to retire before they reach that age. Piloting is stressful and difficult and when a veteran pilot loses that special edge, everyone concerned wants that pilot to be able to retire. Pilot Commissions (and the citizens of the state) do not want pilots on the water whose skills have diminished but are still working out of financial need. It is thus never desirable to have active pilots working only because they cannot afford to retire. Indeed, I believe that this, along with trying to attract the best pilots to the district, is one of the main reasons that the BPC has been so heavily involved in securing retirement benefits for retired pilots for at least the past 52 years.

Q: In your role as the previous Executive Director of the Puget Sound Pilots did you come to any conclusion about the importance of the retirement plan?

A: Yes. As noted, this district's retirement plan is an essential part of the safety net protecting Puget Sound and the functioning of vital pilotage infrastructure. Secure funding is essential for the survival of PSP and a continuation of the pilotage system in Washington that has been so successful over the years in protecting the people of this state against the risks to safety and our environment introduced by the ships calling in our ports. This funding has always been viewed as essential by the BPC.

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Q: Are there other factors you would allude to regarding the integrity of the district's plan?

A: Yes. The current plan largely originated in 1987 after it was negotiated between the pilots and the industry and approved by the Pilot Commission at its December 1987 and January 1988 rate hearing. The pilots would not have unilaterally implemented their plan if it hadn't been approved by the BPC.

Q: What is your thought about the uniformity of support for the pilot retirement program?

A: The retirement plan was fully approved by the BPC and supported by industry until PMSA took over representation of the industry and reversed the PSSOA's previous support for a viable retirement plan in this district. PSSOA was a locally based Washington organization concerned with the quality of the pilot corps in Puget Sound. In contrast, PMSA is a California organization with its headquarters in San Francisco. It has long been a strident opponent of the much more generous retirement plan in place in that district.

Q: What would be the end result if funding of the retirement plan under the approved tariff was discontinued?

A: It would be catastrophic. PSP would be unable to meet its accrued obligations to retired pilots which would trigger, in my view, an unruly liquidation of the organization which would ultimately severely disrupt the delivery of pilotage services in Puget Sound.

Q: How would that impact the safe movement of vessels on Puget Sound?

A: In a very negative manner. As in most ports, the pilotage service in Puget Sound functions through the pilot association. While the individual pilot is responsible for the safe movement of a particular vessel, the association's contribution to safety is much

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broader and ultimately, more significant. PSP freely provides information as a public service to all concerned with safe movement of vessels and provides education, training, professional development, dispatch and accounting services to individual pilots. It provides safety guidelines advising the maritime industry on issues such as sailing times and conditions, use of tugs, etc. Over the years it has been the body generating rest rules, tug guidelines, anchoring standards, tanker escort procedures, tide restrictions, aids to navigation, liaison with the vessel traffic service of the Coast Guard, pilot training and a whole host of other safety-related measures. The Association brings together the collective thinking of the individual pilots and implements them in the form of safety initiatives that ultimately prevail in Puget Sound. Indeed, ships, marine traffic and conditions on the water change all the time. It is impossible for regulatory agencies such as the BPC or the Coast Guard to keep up with emerging threats and effectively legislate safe practices. For example, it is the pilot who first becomes aware that the size of today's ships calling in a particular waterway may require additional safeguards. Discussions among pilots facilitated, organized and presented by the pilot association are what bring about the changes in best practices that keep our waterways safe. This is why pilotage services provided through an association are the model chosen by the great majority of legislatures and pilotage commissions around the country. The collective knowledge of individual, independent pilots organized and presented by pilot associations is perhaps the most important factor in securing the safe movement of ships in any port.

Q: Can you think of any examples where the pilot association played this role?

A: Yes, a good example of this is the use of tugs for container ships calling at Terminal 18 in Seattle. Historically, this was a transit done with two tugs to assist in the docking. As

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ship sizes increased, a number of pilots began to experience situations in which the north wind (prevalent during better weather) would push the stern of the ship away from the dock in a way that steepened the angle of the bow approaching the dock to dangerous levels. Basically, the wind forces pushing on the taller and wider stacks of containers at the stern of the ship were causing the ship to pivot, increasing the chances that the bow would ram the dock or perhaps strike a crane. It was difficult to keep the ship parallels to the dock as it came alongside. These discussions at PSP ultimately resulted in a guideline increasing the number of tugs recommended for this transit to keep the stern in check.

Q: How does tariff funding of the retirement plan relate to the health of Puget Sound Pilots?

A: If the rate-setting body does not include the cost of the retirement plan in the tariff, PSP, would likely be destroyed in a flurry of acrimony and litigation. The retirement program requires 2/3rds vote of all affected parties for an amendment reducing benefits. It would be virtually impossible to achieve this vote of all pilots, retirees and surviving spouses to terminate the plan in the event funding stopped. It can also be expected that the retirees would sue the remaining pilots for liability under the retirement plan and that this litigation would involve all active pilots as defendants. This would be tremendously distracting and wholly detrimental to the safe movement of vessels in the district as well as other region-wide economic repercussions that could result.

Q: Based on your experience at PSP, what would be your recommendation for any future structural adjustments to the plan?

A: If the current plan were to be altered in any fundamental way, that should occur the same way it was created: three-way negotiations involving the pilots, industry and the rate-

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setting body. Should industry again elect not to participate in any prospective advocated structural changes to the retirement plan (which under PMSA's leadership may well occur), it should be negotiated between the pilots and the Commission staff as a first resort and then submitted for regulatory approval.

V. STATE MANDATES IMPACTING PENSION LIABILITY

Q: To your knowledge, has any governmental agency of the State of Washington taken action that would impact PSP's liability under its pension agreement?

A: Yes. In addition to enacting WAC 363-116-315, requiring associations to make retirement payments, there are a number of actions that the BPC has taken to increase PSP's pension liability. The first of which I am aware occurred in December 1987, when the BPC voted to approve funding through the tariff to increase Capt. Henshaw's benefits by increasing his years of service. Later, in 1992, the BPC chairman wrote a letter to the Grays Harbor Pilots and PSP ordering the two associations to amend their retirement plans to provide a Grays Harbor pilot transferring to the Puget Sound with credit for his years in Grays Harbor when calculating benefits under PSP's pension. That letter has been submitted as Exh. WT-4, and responsive correspondence has been submitted as Exh. WT-5. Thus, if a pilot served ten years in Grays Harbor and an additional fifteen in Puget Sound, their retirement benefit to be paid by PSP would be based on 25 years of service. A similar arrangement was made when a second Grays Harbor pilot became licensed in the Puget Sound. A letter relating to that transaction is being submitted as Exh. WT-6. In 2001, when the Port of Grays Harbor took over pilotage in that district, the BPC, with the full support of the PSSOA, crafted a plan under which PSP would be responsible to pay retirement benefits due to then retired Grays Harbor pilots and not yet retired pilots who had years of service accrued before the port took over pilotage in the

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Grays Harbor district. The two memoranda of understanding between those pilots and the PSSOA are submitted as Exhibit WT-3.

Q: Are any of those Grays Harbor pilots still receiving benefits under the PSP pension?

A: Yes, both of the pilots whose Grays Harbor years were credited towards PSP's pension benefits at the direction of the BPC continue to receive retirement benefits today from the PSP.

Q: What impact has the BPC's decision on Grays Harbor had on PSP pension liability?

A: Because the pension agreed upon by industry and PSP included benefits based on 1.5% of target net income for each year of service, the BPC's mandate to credit years of service in Grays Harbor had the effect of increasing the monthly payments PSP must make to those retirees.

Q: Are there any other historical actions that the BPC has taken which impacted PSP's pension liability?

A: Historically, yes. As noted, by 2001, ship traffic in Grays Harbor had declined to the point that the Port of Grays Harbor felt compelled to provide port pilotage service through port employees. When that happened, the port was unwilling to take over the pension liability for the then retired Grays Harbor pilots or the future liability to active pilots who had accrued years of service under the Grays Harbor retirement plan. As a result, in an effort to make sure that the Grays Harbor retirees received their benefits, the commission shifted the burden of paying the retirement benefits to PSP. It did this by both adding on a dollar per voyage surcharge to the Puget Sound tariff and including a pension charge to the Grays Harbor tariff. The pension charge was based on the total cost of all retirement plans in both districts and only covered a portion of the overall liability to the Grays Harbor retirees. The port of Grays Harbor collected the pension

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charge in its tariff and forwarded the funds to PSP who then made up whatever shortfall existed and paid the benefits due to the retirees. Until 2006, under the MOUs in effect and the BPC's tariff setting methodology, the net amount of any funds paid by PSP to Grays Harbor retirees was reimbursed by the tariff.

Q: Were Grays Harbor retirees' pension benefits included in tariff rates in 2006?

A: Starting in 2006, the BPC failed to employ a methodology in adopting its tariff, and so it is not entirely clear what was funded in the BPC approved rates. When asked, individual commissioners always indicated that they were fully funding retirement plans in both districts. In any event throughout my tenure at PSP, PSP continued to make to make the payments due to the Grays Harbor retirees and surviving spouses.

Q: Do you believe that the BPC's mandates regarding PSP's pension liabilities should be considered by the UTC in its setting of the pilotage tariff for the Puget Sound?

A: Yes. The BPC's mandates directly increased PSP's monthly pension expense and overall liability. I recommend that the Commission continue to honor the state's commitment to PSP's retirees and fund its pension expense in rates. I would note that in 2009, the Pilotage Act was amended to specifically provide that the BPC could consider retirement plan costs in setting the tariff and clarifying that the state itself would not become liable to make the payments. (Ch. 496, §1, Laws of Washington, 2009). This language remains today in RCW 88.16.055.

VI. CALL BACK OR COMPENSATION DAY SYSTEM IN PUGET SOUND

Q: What is the PSP's "Callback Day" system, please?

A: The callback system is the Puget Sound district's method of providing rested pilots to ships at the specific time requested by the ship operator during periods of peak traffic or when the pilot corps is understaffed. Ship traffic volume in Puget Sound is uneven and

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unpredictable. There may be 40 transits one day and 12 the next. During my years at PSP, the only traffic that was predictable was seasonal cruise traffic. It was mostly three ships a day on Friday, Saturday and Sunday from mid-May to late September. No other traffic was predictable. Container traffic was uneven and container ships were often not able to meet their schedules. Tanker traffic and bulk traffic and other types of freight traffic were completely random and unpredictable. In order to efficiently meet this moving target of demand for pilots, PSP has long used a system by which off-duty pilots are called back, on a voluntary basis, to take jobs during times of peak demand or when the pilot corps is understaffed.

Q: How does it work?

A: If a ship operator requests a pilot and there are no on-duty pilots eligible for dispatch under the rest rules, PSP will attempt to find an off-duty pilot who will take the assignment. If a rested off-duty pilot is available and takes the assignment, that pilot earns a "Callback Day" (formerly referred to as "comp days"). This Callback Day can be used to take a future duty day off. As an alternative, it can accrue and be "burned" at the end of a pilot's career. If it is burned at the end of a career, the pilot remains on distribution and is paid in the same fashion as an active pilot until all of the accrued Callback Days have been "burned"/expended.

Q: Do you know when the callback system was first implemented?

A. No, it has existed as far back as I can recall. I did some research to see if there was any record of when it first started and found that the 1981 audited financial statement for PSP shows an outstanding comp day liability of $780,000 as of December 31, 1980. This represents an outstanding balance of 1,660 Callback Days. Presumably it had been in existence for some time before that.

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Q: In your view, are there any benefits that the shipping industry has received through the use of a callback system?

A. Absolutely. There are several features of the callback system that provide direct cost savings to the carriers. It lowers the overall cost of pilotage in two ways. By keeping the size of the pilot corps below the number of pilots that would otherwise be required to provide an on-duty pilot to all ships during peak traffic periods, it reduces the overall revenue needs of the tariff. Also, because a significant percentage of Callback Days earned by pilots are used to take a day off during their career, those days never required additional funding in the tariff. At the same time, the callback system provides pilots to ships at times requested by industry when there are no on-duty pilots available due to mandatory rest rules. Without the callback system, the ship would be delayed, increasing the cost to the carrier that would far exceed the incremental cost of funding a callback day.

Q: Does the shipping industry receive any non-financial benefits from use of the callback system?

A. Yes. The use of the callback system has historically permitted pilots to be comfortable refusing an assignment if they felt fatigued. Because of the callback system, pilots who are on duty but fatigued, can take a day off without financial penalty. Because callback jobs are voluntary, only those off-duty pilots who feel that they are properly rested take jobs. Reducing pilot fatigue in turn reduces the risk of an accident that would disrupt industry and cost millions of dollars, if not more, and risk significant property and environmental damage. An environmental catastrophe would obviously be very damaging to the long-term prospects of the shipping industry in this state.

Q: How has the historic use of callbacks changed over time in your view?

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A: When I first went to work for the pilots in 2003, the shipping industry was at the beginning of one of its cyclical boom periods. This triggered a dramatic and rapid increase in the number of outstanding Callback Days. The chart below shows the dynamics of the Callback Day system:

Year	Assign-ments	Number of Licenses Indicated by BPC Target Assign-ment Level	Actual Number of licenses (Including President)	Assign-ments per watch standing pilot	Number of Jobs worked in Excess of the Target Assignment Level	Callback Days Hired	Net Callback Day Accrual at Year End
2003	7,338	50.2	50.5	148.2	-38	352	187
2004	7,604	52.0	50.8	152.7	184	391	184
2005	8,260	56.4	50.9	165.5	825	673	468
2006	8,372	57.2	52.8	161.6	654	840	192
2007	8,315	56.8	53.7	157.8	463	790	227

The chart shows that the main impetus of Callback Day creation is too many assignments and too few pilots. As ship assignments accelerated during this period, the BPC was unable to supply an adequate number of pilots. Indeed, it licensed only a net gain of 4/10ths of a pilot during the first three years of the traffic spike. Assignment per pilots went up to 165 in 2005. During that year, PSP resorted to the comp time system to supply a pilot 673 times and there was a net addition of 468 Callback Days to the total

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accrual. The chart also reflects that the overwhelming majority of Callback Days hired are used to take a day off, rather than being burned at the end of a career and requiring funding by the tariff. For example, in 2006, the Callback Day system was used 840 times to provide a pilot when requested, but the net accrual only went up 192. During that year, only 103 days were burned by retiring pilots requiring funding in the tariff. Thus, 545 Callback Days were used by active pilots to take a day off and cost industry nothing.

Q: During your time at PSP, did PSP undertake any efforts to reduce Callback Day accrual.

A: Yes, various steps were taken. To the extent possible, training was moved out of the summer months, although now I understand that with compulsory training and other obligations this has not really alleviated pressure on callback accrual due to the compression of these necessary training sessions. We also changed the calendar for various PSP activities such as election of directors, committee work etc. to move more of that activity into the less busy winter months. We instituted a practice of securing adequate rest facilities on cruise ships and assigning pilots to these trips on a round-trip basis: they would bring the ship inbound from Port Angeles, rest on board and then take the ship back out later in the day. (Rest rules enacted by the Legislature in 2019 have since disallowed this practice). Because the cruise ship traffic again was relatively predictable, we were able to assign extra pilots to work on weekends during the cruise season.

Q: Why has it been so difficult to reduce the number of Callback Days outstanding?

A: There are a number of reasons. Few maritime safety topics have received more attention in recent years than human fatigue. To the best of my knowledge, the first rest rule in the Puget Sound district was RCW 88.16.103 enacted in 1977. Since then, rest rules have

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been augmented over the years in recognition of the role that fatigue often plays in marine incidents. The most recent statutory change on this was an amendment to the same RCW enacted earlier this year, increasing mandatory rest periods to 10 hours between assignments and requiring that pilots have a mandatory rest period after working three nights in a row. The primary methods for reducing Callback Day accrual are increasing the size of the pilot corps, delaying ships (or putting them on a more regular schedule) or dispatching pilots without adequate rest. Increasing the number of pilots can take time, delaying or scheduling ships is harmful to industry and the ports and dispatching fatigued pilots is not an option. During my tenure, in response to its complaints about the cost of paying pilots burning Callback Days, we repeatedly invited PMSA to suggest changes that would reduce comp day accrual. I do not recall ever receiving a feasible suggestion from them.

Q: During your tenure at PSP what was industry's position on Callback Days?

A: PSSOA had recognized the savings that reliance on callbacks brought about and was appreciative that it made pilots available to move their ships during per peak traffic periods or during periods of pilot shortages. For example, in the 2001 MOU among PSP, PSSOA and Polar Tankers, an amendment was made to specifically add an adjustment to the formula to compensate "for PSP expenses related to compensatory duty days accrued by pilots at the time of their retirement." The computation page for the 2001 joint tariff submission has a line item addition of .78 pilots to the active number of pilots for purposes of determining tariff funding. Essentially, it treats pilots burning Callback Days the same as active pilots for purposes of setting the tariff. This methodology was followed by the BPC for decades.

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Q: Were there any changes in industry's position on Callback Days during your tenure at PSP?

A: Yes, as with the retirement issue, PMSA changed industry's position on Callback Days after the 24% tariff increase at the 2006 rate hearing. Indeed, PMSA's 2006 tariff submission was supportive of Callback Days: "The use of comp days provides an opportunity to staff below peak demand if done reasonably. It makes good sense and provides a 'win/win' situation." It went on to recommend adding 1.2 pilots to the size of the pilot corps for purposes of computing the tariff to fund this Callback Day expense. After the 2006 rate decision PMSA changed its position. Thereafter, it often complained about the cost of the Callback Day system while at the same time resisting PSP's efforts to lower the target assignment level and expand the pilot corps.

Q: Did PSP ever historically request that the BPC increase the number of pilots in a way that would reduce that reliance upon off-duty pilots?

A. Yes, we regularly requested an increase in the number of licensed pilots which would have the effect of reducing Callback Day accrual and pilot earnings. PMSA resisted these efforts which occurred in what is known as a "065 hearing." (WAC 363-116-065.)

Q: What was the impact of those requests?

A: For example, in 2010, PSP requested that the BPC reduce the target assignment level it had last set in 1995 to a level that would have reduced the number of callback jobs required. In April 2010, the BPC had its first 065 hearing. The agenda item listed DISCUSSION AND RESOLUTION CONCERNING SETTING THE NUMBER OF PILOTS IN THE PUGET SOUND PILOTAGE DISTRICT, TARGET ASSIGNMENT LEVEL, **AND MANAGEMENT OF THE COMP DAY SYSTEM** AS PROVIDED IN WAC 363-116-065. (Emphasis added.) At that hearing, PSP argued for 57 pilots and

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PMSA argued for 48. The BPC lowered the target assignment level and authorized 54 pilots. Later that year, PSP requested that the number of licenses be lowered to 52 and PMSA argued for 50. Again, in 2012, PSP asked the BPC to increase the number of licenses to 53 and PMSA opposed the increase. In April of 2013, PSP requested an increase to 55 and PMSA opposed the request. This ask was renewed in 2014 and PMSA again opposed. Reference to the BPC web page shows that PMSA has continued its resistance to increasing the number of pilots as late as the July 2019 proceeding before the BPC to set the number of pilots.

VII. CURRENT TARIFF PROPOSAL

Q: Mr. Tabler, do you understand that PSP is now proposing to implement its requested revenue requirement proposal over a three-year period?

A: Yes, I have been told that.

Q: Have you reviewed some of the BPC minutes or do you recall from your time at PSP whether significant rate increases have previously occurred on an annual basis?

A: Yes. Both from my personal knowledge and in reviewing documents for testimony in this proceeding I have noticed a similar pattern in the past.

Q: What is that pattern?

A: Well, first of all recall that under the previous statute, PSP was required to submit rate adjustments annually to the Board of Pilotage Commissioners. Over the years that I was there and specifically in the 2006-2008 period, PSP submitted its annual rate requests to the BPC and received significant back-to-back tariff increases.

Q: When was that please?

A: It was in 2006-2008.

Q: And what happened then?

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A: In 2006, the Board of Pilotage Commissioners ordered a 24% increase in rates for PSP after a period of significant lag in Puget Sound pilot compensation when compared to national numbers.

Q: And what happened after 2006?

A: That adjustment was followed by additional increases of 5% in 2007 and 4% in 2008.

Q: How did that translate into overall revenue increases?

A: Well, in doing the math you can see that over those three years the overall cumulative increase in PSP's rates was 35.4%. Gross revenue went from $20.7 million in 2005 to $30.5 million in 2008 – a 47% increase. This is similar to the 48% increase in tariff rates between 1990 and 1996.

Q: And how does that compare to what is being proposed in this filing at the UTC?

A: Well, as I understand the revenue requirement is sought to be increased 26.4% in the first year of the PSP proposal, and in the next year approximately 8.1% and in the following final year 2.34%.

Q: And in doing the math, what sort of increase does that then entail?

A: 39.89% over the three year period which is modestly above the percentage adjustment granted in the 2006-2008 by the BPC.

Q: Have you provided copies of the BPC minutes from 2006-2008 reflecting these increases?

A: Yes. Attached as Exh. Nos. WT-7, WT-8, WT-9 are the meeting minutes referencing those rate adjustments.

VIII. CONCLUSION

Q: Does that conclude your direct testimony?

A: Yes, it does.

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