

**BEFORE THE STATE OF WASHINGTON**  
**UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

Docket TP-220513

**PETITIONER PUGET SOUND  
PILOTS [PROPOSED] REPLY IN  
SUPPORT OF PETITION FOR  
INTERIM RATE RELIEF**

**I. INTRODUCTION.**

1. On June 29, Puget Sound Pilots (“PSP”) filed a Petition for Interim Rate Relief (“Petition”) requesting an amendment of the current tariff to cover the actual cost of additional licensees who have joined or will join PSP before the conclusion of the pending general rate case through the implementation of an automatic adjuster, up to the staffing level of 56 full time pilots approved by the Washington Board of Pilotage Commissioners (“BPC”).<sup>1</sup>
2. In support of the Petition, PSP relies on the authorities cited herein and the evidentiary record developed in support of its simultaneously filed general rate case. That record, which includes more than 500 pages of testimony from 22 witnesses and more than 120 exhibits, demonstrates unequivocally that PSP is underfunded to the point that it ranks dead last in

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<sup>1</sup> PSP Petition for Interim Rate Relief at 7, ¶ 19.

pilot income among the representative sample of 14 U.S. pilot groups for which data is publicly available.<sup>2</sup>

3. The record is also clear that PSP has been dangerously understaffed, with callback rates that significantly exceed those of other West Coast pilot groups.<sup>3</sup> The testimony of world-leading sleep expert Dr. Charles Czeisler confirms that the level of pilot callbacks – a direct product of PSP operating with too few active pilots – increases the risk of pilot error and a potentially major catastrophe due to pilots’ lack of adequate rest.<sup>4</sup> The addition of new licensees up to the staffing level authorized by the BPC is necessary to reduce callbacks and improve the efficiency and safety of pilotage on Puget Sound.
4. On July 19, 2022, Intervenor Pacific Merchant Shipping Association (“PMSA”) and Staff filed responses in opposition to PSP’s Petition. As both Staff and PMSA acknowledge, the touchstone of the Commission’s analysis in evaluating the Petition is whether granting PSP’s proposed interim relief (i.e., the inclusion of an automatic adjuster to cover costs associated with increased staffing up to BPC approved levels) is in the public interest.<sup>5</sup> On the record before the Commission, the answer is clearly yes.
5. In opposing the Petition, PMSA and Staff misunderstand important and unique aspects of Washington’s compulsory pilotage system relative to traditional utilities. PMSA, in particular, conflates the private interests of its members (primarily, massive foreign-flag ocean carriers) in maximizing their profits at the expense of public safety, with Washingtonians’ statutorily protected right to a pilotage system that is funded and staffed to

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<sup>2</sup> Lough at 10-11. Line 11 of the table contained at page 23 of compensation expert David Lough’s testimony consolidates the three pilot groups serving the Great Lakes. For this reason, Mr. Lough sometimes refers to 12 pilot groups rather than the 14 for which data are included.

<sup>3</sup> Carlson, Exh. IC-01T at 27-28.

<sup>4</sup> Czeisler, Exh. CAC-01T at 84-85.

<sup>5</sup> Staff Response to Puget Sound Pilots’ Petition for Interim Rate Relief (“Staff Response”) at 5, ¶ 10; PMSA’s Opposition to PSP’s Petition for Interim Rate Increase (“PMSA Response”) at 15-16, ¶ 30.

the level that is necessary to provide the “best achievable protection” of Puget Sound’s unique ecology and critically important natural resources.<sup>6</sup>

6. PMSA also wrongly criticizes PSP for pointing out that PMSA’s members (PSP’s ratepayers) earned exorbitant profits during the pandemic while pilot income – and, by extension, the competitiveness and reputation of Washington’s pilotage system – suffered greatly. But it was PMSA who injected the issue of its members’ economic fitness by arguing falsely in the last rate case that approving PSP’s requested tariff would harm the public interest by decreasing the competitiveness of Washington’s ports.<sup>7</sup> As shown by the testimony of shipping economist Ken Eriksen, pilotage rates are in fact a completely insignificant component of carrier costs that have no bearing whatsoever on where ships call.<sup>8</sup> Where PMSA claims that the public interest in maritime safety that is advanced by a fully funded pilotage system must be balanced against the supposed risk to the health of Washington’s economy of raising pilotage rates to support a competitive level of pilot income, it is perfectly legitimate for the Commission to consider the massive profits earned by PMSA’s members in evaluating the credibility of its position.
7. The bottom line is that the addition of new licensees to more fully staff the 56-pilot strong corps approved by the BPC is in the public interest because it will help ensure pilots are rested and available to provide the most efficient service, without compelling PSP to subsidize ratepayers by further reducing distributable net income below the approved target. It is also decidedly in the public interest that PSP pilots earn an income that is competitive

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<sup>6</sup> See Costanzo, Exh. CPC-01T at 11-34 (discussing the best achievable protection standard).

<sup>7</sup> *Wash. Utils. & Transp. Comm. v. Puget Sound Pilots*, Docket TP-190976, Moore, Exh. MM-1, 128-136.

<sup>8</sup> Eriksen, Exh. KAE-01T at 39-42.

with their elite peers in other U.S. pilot groups. On that score, the testimony of Captain Sandy Bendixen is as powerful as it is deeply concerning:

On a personal level, I find it deeply upsetting that at this time I cannot honestly and in good conscience mentor and encourage an interested female captain to pursue a career with Puget Sound Pilots when I know full well that the financial benefits of almost any other pilotage district in the country are superior to Puget Sound, and that for the first time in my and most of my colleagues' professional maritime careers we are soon to be entirely without funded medical benefits.<sup>9</sup>

As Captain Bendixen's testimony lays bare, PMSA and Staff fail to appreciate the serious threat to PSP's reputation that results from pilot compensation that falls significantly below competitive levels, and the resulting severe long-term damage to PSP's recruitment and diversity, equity and inclusion efforts that are integral to the quality of pilotage on Puget Sound and the protection of Washington's ecological and economic interests.

8. Order 09 approved tariff funding of 52 full-time pilots based in significant part on Captain Carlson's estimate at the time that PSP's pilot corps would reach that level by the end of 2021.<sup>10</sup> The Commission also exercised its discretion to phase in the increase in funded pilots in order to mitigate concerns of possible rate shock.<sup>11</sup> Now, in the third quarter of 2022, two key points have become clear. First, PSP has continued to grow its pilot corps toward the 56 pilots authorized by BPC. And second, PSP's ratepayers have earned record shattering profits during the COVID 19 pandemic, eliminating any concerns of rate shock that may have existed when Order 09 was entered.<sup>12</sup>

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<sup>9</sup> Bendixen, Exh. SB-01T at 5-6.

<sup>10</sup> *Wash. Utils. & Transp. Comm. v. Puget Sound Pilots*, Docket TP-190976, Order 09 (hereinafter, "Order 09"), 28, ¶ 94; 31 ¶ 103 (November 25, 2020).

<sup>11</sup> *Id.* at 30, ¶ 102.

<sup>12</sup> Costanzo, Exh. CPC-01T at 38-39.

9. The following sections briefly respond to the arguments raised by PMSA and Staff in their respective opposition briefs. For the reasons set forth herein and in PSP’s Petition, the requested interim relief is in the public interest and should be granted. As the number of PSP pilots increases toward the BPC approved 56-pilot level, rates should increase proportionately to pay for that cost on an interim basis pending the conclusion of PSP’s current rate case.<sup>13</sup>

## **II. ARGUMENT.**

### **A. PSP’s Requested Interim Relief is Consistent with Order 09.**

10. Both PMSA and Staff argue that PSP has not shown that requiring PSP’s current pilots to subsidize the cost of new licensees would cause gross inequity, because Order 09 did not set the tariff based on the actual number of then-active pilots. However, as explained below, the proposed interim adjustment is consistent with Order 09’s reasoning and intent.

11. First, the Commission correctly recognized in Order 09 that the “BPC is charged with determining the number of pilots necessary to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district.”<sup>14</sup> The BPC has found that the number of pilots sufficient to optimize these objectives in the Puget Sound Pilotage District is 56. Giving appropriate deference to the BPC’s determination, as the Commission did in Order 09, it follows that there is no question that ratepayers (and, of course, the public) realize the additional benefits of safer, more efficient pilotage service as the number of PSP

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<sup>13</sup> Staff correctly points out a slight discrepancy between the relief requested in the petition and Captain Carlson’s testimony that the proposed adjuster should not apply to reduce rates below 52 funded pilots if the actual number of active pilots is reduced through attrition below that level. It is PSP’s intent that rates be adjusted to reflect the net number of active pilots regardless of whether that number falls above or below the currently funded 52 pilot level. PSP retracts Captain Carlson’s testimony on this issue to the extent that it is inconsistent with the relief requested in the petition.

<sup>14</sup> Order 09 at 29, ¶ 98.

licensees increases toward the BPC-approved staffing level. Plainly, it would be inequitable for PSP to subsidize that added value to ratepayers from current pilots' income.

12. Second, Order 09 suggests that the Commission intended the number of tariff-funded pilots to be reflective of the actual number of licensees within the limits approved by BPC. In setting the number of funded pilots during the second tariff year, the Commission expressly relied on Captain Carlson's testimony that he expected the number of licensees to rise to 52 by the end of 2021.<sup>15</sup> The Commission also sought in Order 09 to "institute a realistic, gradual increase from the number of current working pilots in the first year to Staff's recommended number in year two, progressing towards the number of licensed pilots the BPC has identified."<sup>16</sup> The Commission then expressly found that "[t]his method also incorporates traditional ratemaking principles." Adjusting rates to accommodate progress toward BPC-approved staffing levels is precisely the relief that the Petition requests.
13. Third, based on its expectation that the number of actual pilots would increase over time, the Commission sought to phase in the rate increase gradually in consideration of potential adverse economic effects of the COVID 19 pandemic on ratepayers.<sup>17</sup> During the more than 18 months that have passed since Order 09 was entered, the opposite has proven to be true: the massive foreign carriers that make up the largest share of PSP's ratepayers realized immense profits during the pandemic, next to which the rate increase that is necessary to fund the additional BPC-approved licensees that have and will join PSP while the current tariff is in effect is completely insignificant.<sup>18</sup>

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<sup>15</sup> *Id.* at 31, ¶ 103, n. 182.

<sup>16</sup> *Id.* at 24, ¶ 85 (emphasis added)

<sup>17</sup> *Id.*

<sup>18</sup> Eriksen, Exh. KAE at 41.

14. Fourth, in rejecting PSP's request in the prior rate case (which PSP now agrees was in error) to fund 61.2 full-time pilot equivalents rather than set rates based on the actual number of active pilots, the Commission explained that "[b]ecause we do not have evidence that the BPC will authorize additional pilots, PSP's proposed adjustment does not reflect a known and measurable expense. This instead reflects a proposed, long-term plan for investment, which should not be included in rates until the investments are actually made."<sup>19</sup> Consistent with the BPC's authorization and the Commission's above-stated rationale, the Petition simply requests that the cost associated with recent and imminently anticipated new licensees be incorporated into PSP's rates once those investments are actually made. It would be grossly inequitable for PSP and its current licensees to bear that significant cost from DNI on behalf of the ratepayers that benefit from these additional pilots.

**B. PSP's Requested Interim Relief is Consistent with PMSA's Position in the Prior Rate Case That the Rates Should Reflect the Number of Actually Licensed Pilots.**

15. PMSA's opposition to PSP's request for interim relief directly contradicts its position in the last rate case, when PMSA argued strongly that the tariff should reflect the actual number of pilots:

Reliance on the actual number of pilots licensed at the time of a Commission decision reduces speculation, enhances ease of application of the tariff formula, and negates potential issues with respect to the relationship between the Commission and BPC. Using the actual number of pilots will always reflect the most precise number of pilots working vessels and providing pilotage services. The use of an actual number at the time of tariff adoption will never be too low compared to actual (potentially yielding a rate that would be a windfall to customers) or too high compared to actual (potentially yielding a rate that would be a windfall to pilots). Using the actual number of pilots will eliminate arguments over variability, fairness, or accuracy in a methodology for determining TDNI.<sup>20</sup>

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<sup>19</sup> Order 09 at 25, ¶ 88.

<sup>20</sup> *Wash. Utils. & Transp. Comm. v. Puget Sound Pilots*, Docket TP-190976, Initial Brief on Behalf of Pacific Merchant Shipping Association at 6, ¶ 13 (emphasis added).

16. PSP agrees that TDNI should be based on the actual number of pilots. However, setting an inflexible number of funded pilots at the conclusion of a general rate case that may result in a tariff that remains in place for several years will not “always reflect the most precise number of pilots working vessels and providing pilotage services.”<sup>21</sup> Rather, the best way to accomplish this appropriate objective is to include in the tariff an automatic adjuster that augments or reduces rates to conform to PSP’s actual number of active licensees at any given time. The benefits of this automatic adjuster are multifold and are addressed in the testimony of PSP President Captain Ivan Carlson.<sup>22</sup> On an interim basis, an automatic adjuster should be added to the current tariff and applied to cover the cost of additional licensees.

17. The inconsistency between the position advanced by PMSA in the last rate case and in opposing PSP’s Petition shows that it is not concerned with equity or the public interest. Rather, PMSA’s objective is to externalize to the public the cost and risks associated with its members’ operations to the maximum extent possible – a penchant for which the large foreign carriers that comprise PMSA’s membership are well known.<sup>23</sup> Unfortunately, that is true even when, as in this case, the cost at issue is *de minimus* and the risks to Washington public interest of an underfunded pilotage system are gargantuan.

**C. The Underfunding of the Pilotage System That Will be Exacerbated if Current Pilots are Forced to Subsidize Ratepayers by Funding New Licensees from Current Pilot Income is an Emergency.**

18. In their opposition briefs, PMSA and Staff each fail to appreciate the serious public safety threat of an underfunded pilotage system that will be materially worsened if PSP is forced to

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<sup>21</sup> *Id.*

<sup>22</sup> Carlson, Exh. IC-01T at 28-31.

<sup>23</sup> Costanzo, CPC-01T at 34-51.



further reduce already suppressed pilot income to subsidize the cost of new licensees through the current tariff.

19. PMSA's position is duplicitous:

The Interim Petition asserts higher rates are necessary because PSP has attracted so many new pilot trainees to join its ranks that it has become an inequitable hardship. But in its general rate case, PSP seeks higher rates based on its claim that it cannot attract new pilot trainees to join its ranks. Both cannot be true.<sup>24</sup>

In fact, there is no inconsistency between PSP's request for interim relief and its position in the general rate case. The addition of new licensees is necessary to staff PSP to the level determined by the BPC to optimize public safety and efficient service. PSP is not in control of either when trainees are selected from a ranked list generated by the BPC (following an examination process that occurs every few years) or when a trainee becomes licensed following 18 months or more of training. At the same time, a further reduction in pilot income will have deleterious effects on PSP's competitiveness in the national market for top mariner applicants and its mission-critical ongoing efforts to recruit a diverse and inclusive corps with the full complement of maritime backgrounds from an incredibly small national pool of elite candidates.

20. Staff's position, while genuine, is overly simplistic and incorrect:

PSP has not established that the potential reputational harm asserted related to pilot DNI is of such an immediate or short-term character that it must be resolved through extraordinary interim rates.<sup>25</sup>

Respectfully, Staff's position fails to appreciate the extraordinary competition for recruits among U.S. pilot groups and the critical role of a pilot group's reputation

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<sup>24</sup> PMSA Response, 2 ¶ 5; *see also, id.* at 7-8 ¶ 16.

<sup>25</sup> Staff Response at 13, ¶ 25.

among prospective candidates (which is significantly affected by compensation and benefit levels) in that process.

21. Among the 14 U.S. pilot groups for which pilot compensation information is publicly available, PSP ranks dead last.<sup>26</sup> This is an immediate, ongoing crisis for PSP's recruitment efforts that will be inflamed by a further significant reduction in pilot income caused by failing to grant interim relief that is necessary to cover the cost of as many as four currently unfunded licensees (more than 7% of the total BPC-authorized pilot corps) that are or will be active while the current tariff remains in effect.
22. To provide the best achievable protection of Puget Sound that Washington law requires, PSP must compete to attract diverse candidates from within an extraordinarily small national pool. On this point, Captain Deborah Dempsey – who, among many other achievements, was first graduate of a U.S. maritime academy, first female master on international voyages, first female captain delivering military supplies in a war zone (Persian Gulf War), and first female pilot serving as a Columbia River Bar Pilot – testified as follows:

In my opinion and experience, the pilot group is also enhanced by gender and racial diversity because pilotage challenges such as how best to handle hypothetical emergency situations or challenging maneuvers in close quarters are vetted more thoroughly when the group examines the issue from a wide range of perspectives and analytical approaches to problem solving.<sup>27</sup>

23. It is no secret that historically, the demographics of the merchant marine generally and pilotage profession in particular have not reflected the diversity of the communities they serve. PSP is committed to addressing this critical problem for the benefit of its own organization and the public interest that PSP exists to serve. In addition to developing a DEI policy, an outreach team, working in the local schools and community, and supporting

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<sup>26</sup> Lough, DL-01T at 10-11.

<sup>27</sup> Dempsey, Exh. DDD-01T at 5.

organizations through scholarships and community involvement, PSP has adopted a nation-leading maternity leave policy that affords pilots as much as six months of pregnancy-related paid time off.<sup>28</sup>

24. These concrete steps represent an important ongoing and long-term investment in the diversity – and, consequently, the quality – of PSP’s pilot corps. As Chief Mate Alysia Johnson – a standout mariner who graduated summa cum laude from the U.S. Merchant Marine Academy in Kings Point in 2015 – testified:

First, the adoption of this type of progressive family-friendly policy will become known throughout the industry fairly quickly. This is because, in my experience, mariners commonly share information back and forth about the details of their compensation and benefits packages and compare those to what is available through other companies or union contracts. Second, if it became widely known that there were several pilot groups in the United States that offered a similar maternity leave benefit, I believe it would cause a significant number of the women who are currently dropping out of their deck department careers to pursue them for the 10 to 15 years necessary to be qualified to apply for a maritime pilot position. This is because, compared to the extended work-cycle time served on the vessel for seagoing deck careers, a maritime pilot is living at home and traveling during their on-duty work cycle to and from the pilotage assignments within their pilotage district.<sup>29</sup>

25. But PSP’s efforts are being directly undercut by pilot compensation that is inadequate and uncompetitive. With the UTC having slashed pilots’ funding for medical benefits and approved a tariff in the last rate case that has left PSP ranked dead last in distributable net income among the 14 pilot groups for which data is publicly available, there can be no doubt that UTC’s underfunding of the pilotage program is an overwhelming headwind against PSP’s DEI advancement efforts. The problem is so acute, that Captain Bendixen – a sitting BPC member, PSP’s only current female pilot and the first beneficiary of PSP’s progressive approach to family leave after the birth of her daughter – “cannot honestly and in good

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<sup>28</sup> Costanzo, Exh. CPC-01T at 4-7.

<sup>29</sup> Johnson, Exh. AJ-01T at 8-9.

conscience mentor and encourage an interested female captain to pursue a career with Puget Sound Pilots.”<sup>30</sup>

26. To characterize the current pilot compensation deficit as anything other than an emergency is simply naive. Likewise, to perceive this as a non-urgent problem that can afford to be made worse by failing to fund increased staffing in the current tariff before it is (hopefully) redressed more comprehensively in the current rate case without risking lasting damage to the pilotage program simply misunderstands the realities of PSP’s ongoing recruitment efforts.

**D. PSP’s Proposed Interim Rate Relief Comports with the Cost Causation Principle.**

27. As Staff correctly notes in its opposition, the Commission explained in Order 09 that “the principle of cost causation assigns costs to those ratepayers who cause the expenses to occur. Vessels should pay for tariff rates that appropriately reflect the cost of maintaining compulsory pilotage.”<sup>31</sup> PSP’s proposed interim relief does just that, by assessing the proposed rate increase prospectively on the vessels that benefit from the efficiency and service improvements afforded by a more fully staffed pilot corps.

28. PMSA misleadingly implies that the proposed interim relief violates the cost causation principle by supposedly including the profitability of large vessels as a factor in rate setting. But as explained above, that is simply not the case. Rather, PSP raises the extraordinary profitability of the shipping industry (PMSA’s members) to demonstrate that concerns about potential rate shock are not warranted, and that PMSA’s attempt to pit the public’s interest in the increased safety and environmental protection benefits of a fully staffed (and, therefore,

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<sup>30</sup> Bendixen, Exh. SB-01T at 5.

<sup>31</sup> Staff Response, 6 ¶ 12.

better rested) pilot corps against a supposed threat to the competitive standing of Washington's ports presents a false choice.

**E. Given the Narrow Issue in Dispute, a Hearing on PSP's Petition Can and Should be Held Expeditiously.**

29. PSP's Petition presents just one key question: Should interim relief be granted to adjust the current tariff automatically to cover the cost of the actual number of active pilots. If the Commission agrees that the requested interim relief should be granted, the only remaining issue is to determine what that cost is. In that regard, Captain Carlson testifies that the cost of each additional pilot is \$499,004.<sup>32</sup> Neither PMSA nor Staff dispute Captain Carlson's calculation, which can be readily substantiated in detail and should not generate significant controversy. Given the thoroughly briefed record and limited scope of the issues, the Commission can and should set an expedited hearing to resolve the Petition.

**III. CONCLUSION.**

30. Following an expedited hearing, PSP's Petition should be granted because the requested interim relief is in the public interest.

Respectfully submitted this 2nd day of August, 2022.

HAGLUND KELLEY LLP

*s/ Michael E. Haglund*

Michael E. Haglund, OSB No. 772030

Julie Weis, WSBA No. 43427

Eric E. Brickenstein, OSB No. 142852

HAGLUND KELLEY LLP

2177 SW Broadway

Portland, OR 97201

Telephone: (503) 225-0777

Facsimile: (503) 225-1257

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<sup>32</sup> Carlson, Exh. IT-01T at 29.

Email: [mhaglund@hk-law.com](mailto:mhaglund@hk-law.com)  
[jweis@hk-law.com](mailto:jweis@hk-law.com)  
[ebrickenstein@hk-law.com](mailto:ebrickenstein@hk-law.com)

*Attorneys for Respondent*