Exh. MM-1T
Docket TP-220513
Witness: Michael Moore

BEFORE THE STATE OF WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND PILOTS, Respondent.	Docket No. TP-220513

TESTIMONY OF

CAPTAIN MICHAEL MOORE

ON BEHALF OF

PACIFIC MERCHANT SHIPPING ASSOCIATION

PMSA's Positions on the Tariff, Pilotage Service, and Pilotage Conditions

FEBRUARY 10, 2023

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I. INTRODUCTION

Q: Please state your name, position and business address.

A: Captain Michael Moore, Vice President, Pacific Merchant Shipping Association, 2200 Alaskan Way, Suite 160, Seattle, WA 98121.

A. Pacific Merchant Shipping Association's interest in this proceeding.

Q: Describe the Pacific Merchant Shipping Association.

A: The Pacific Merchant Shipping Association ("PMSA") is a mutual benefit trade association which represents ocean carriers, marine terminal operators, and other companies with interests in the successful operations of seaports on the US West Coast in legal, public policy, and regulatory matters that impact maritime commerce.

Q: Describe the interest of PMSA in this proceeding.

A: PMSA represents ocean carriers and vessel operators that are consumers of the services provided by state-licensed pilots. PMSA is an interested stakeholder in this proceeding as a representative of its member companies that are required to pay state-licensed pilots the rates established by the tariff.

B. Witness background.

Q: Did you testify on behalf of PMSA in the prior Puget Sound Pilot ratesetting matter before the Commission?

A: Yes. I provided testimony on behalf of PMSA in the prior PSP case, docket TP-190976.

Q: Is there any supplemental biographical information that you would like to add to the extensive history of your service in the United States Coast Guard that you provided to the Commission in the previous case?

A: Yes. First, my CV is attached here as Exhibit MM-2. I will elaborate here on my background implementing a key Coast Guard mission area, the Port State Control Program. The Program was designed to address the shortcomings of flag state control of foreign vessels and to eliminate substandard shipping from calling on U.S. ports. After my tour of duty on the Icebreaker Polar Sea in the late 70's, including time as the Operations Officer with navigation responsibilities, I was transferred to what was then called the Marine Inspection Office where I inspected domestic vessels during construction, repair or during periodic examinations. The Coast Guard also had a foreign vessel boarding program; however, deficiencies were handled primarily by communicating with the flag state for follow up. A flag state is essentially the country a vessel was registered or flagged in, and at that time flag state follow-up was inconsistent. To address this the Coast Guard implemented the Port State Control program in 1994 asserting jurisdiction to enforce standards with a goal of eliminating substandard vessels. I served as Chief of Port Operations in the Ports of Los Angeles and Long Beach for the Coast Guard from 1994 to 1998 and was assigned the responsibility for implementing Port State Control in that very large port complex with up to 6,000 vessel arrivals per year. This responsibility included evaluating incoming vessels using a number of factors including the history of the vessel owner/operator, the vessel history, vessel type and age, performance of the involved classification society which in part issues certificates of compliance with various requirements and standards and of course the performance of the flag state. This process ultimately resulted in prioritizing each vessel by their risk profile, which drove decisions around denying entry, issuance of operational requirements and targeting of port state control boardings and examinations. In 1998, I was assigned to Puget Sound as Executive Officer and Alternate Captain of the Port and was promoted to Captain of the Port in 1999. Ongoing implementation of the Port State Control was one of my key responsibilities, and it tied directly to the goal of eliminating substandard ship calls by foreign flagged vessels.

Q: Would you please briefly describe your experience with navigational safety, vessel inspection, and maritime industry affairs since your retirement from service with the US Coast Guard and during your tenure with PMSA?

A: I have continued to work to achieve the goals that were a focus of my duties during a marine safety career culminating in Puget Sound as Officer in Charge Marine Inspection and Captain of the Port, i.e., the goals of safe, efficient, and environmentally sound marine transportation. I participate on the Harbor Safety Committee, which I co-founded, as Operations Chair and on the Steering Committee. I serve from time to time on various oil spill prevention or response committees/groups via appointment or invitation. I continue to participate in risk and waterway studies around vessel traffic, of which there have been many over the years, and I provide input to any follow up procedures, policies, standards of care and rulemaking. I serve on the state ballast water work group, and the ports air emissions inventory and advisory groups. I continue to be involved with risk mitigation projects in Canada regarding vessel traffic at the Canadian government's request. I chair the Emergency Response Towing Vessel Compliance Group, which provides a tug stationed at Neah Bay to mitigate risk of vessels in trouble. I served 5 years as Chair of the Alaska Maritime Prevention & Response Network, which provides an oil spill prevention and response system serving vessels on the Great Circle route to and from Asia with routing procedures, early detection of problems and response capacity. The US Coast Guard has recognized the Network's outstanding achievements in marine environmental protection to support safe, sustainable shipping by awarding it the prestigious, top-level Rear Admiral William M. Benkert Marine Environmental Protection Osprey Award of Excellence. The Coast Guard only selects one organization nationwide every two years for this coveted award. I now serve as Vice Chair of the Alaska Chadux Network, which consolidated Network services with an Oil Spill Response Organization to provide more comprehensive prevention and response coverage. I continue to serve on both the ECHO program out of the Port of Vancouver and on the Quiet Sound group in Puget Sound. Both deal with mitigation of vessel traffic noise impacts on southern resident killer whales, primarily through targeted slow-downs while technology on noise suppression is introduced.

II. PURPOSE AND SUMMARY OF TESTIMONY

Q: What is the purpose of your testimony?

A: My testimony will be two-fold:

1. To provide PMSA's position with respect to this rate-setting proceeding; and,
2. To offer my expertise with respect to matters of navigational safety.

Q: Please summarize PMSA's general position with respect to this rate-setting proceeding.

A: PMSA opposes the petition to increase pilotage rates as proposed by PSP. Instead, PMSA supports adopting relatively minor adjustments to the tariff in a manner consistent with the Commission's findings and conclusions in the last rate case (TP-190976). We believe that the tariff can be adjusted in a manner which is fair, just, reasonable, and sufficient after properly applying and limiting the inputs for the formula adopted by the Commission. While PMSA has some suggestions and slight revisions to suggest in the application of the formula, as I will explain in my testimony, we believe that the Commission has already considered and settled most of the outstanding questions that were at issue in the prior case correctly.

To the extent that PSP seeks to re-litigate the same questions already considered and settled by the Commission, for instance PSP's attempts to reassert payment for callback days, medical insurance, or as related to matters of fatigue, PMSA does not believe that PSP has made a compelling case for re-opening those questions.

To the extent that PSP seeks to alter the formula by the creation of new automatic adjusters, PMSA does not believe that PSP has made a compelling case for these deviations from the Commission-approved formula.

To the extent that PSP seeks to transfer the liabilities for the existing and future pilot retirement program from PSP to its customers, and in the process foist the costs of a risky and unproven new defined benefit retirement system on vessels, PMSA does not believe that PSP has made a compelling case for this exceptionally expensive proposition. Further, PMSA is disappointed in the various ways PSP has flaunted the direction given by the Commission with respect to work on this issue.

Lastly, PSP seeks an exceptionally large and unnecessary increase in pilot TDNI that deviates from the Commission's prior rate-setting methodology regarding DNI and the number of pilots. PSP's theories for why the established formula should be ignored and revised is based on numerous unproven, speculative, and false grounds.

Q: Please summarize your testimony with respect to matters of navigational safety.

A: PSP does not present a compelling safety, operational, or navigational basis for an increased rate. PSP's requested increase is not based on any evidence of any significant changes in the present conditions of pilotage, including any risks to pilots or vessels of the provision of the pilotage service which are not already accounted for in the current tariff and covered by current tariff revenues. PSP's own testimony belies its claims that it needs more pilots to be safe, that it needs more diverse licensees to be safe, or that its pilots suffer persistent and growing risks.

Q: Are there any clarifications or reservations that you would like to add to this testimony?

A: Yes. While some of my testimony will touch on areas of PSP's expenses and costs that PMSA finds objectionable, we do not possess the high level of expertise in regulatory accounting possessed by the UTC Staff. Because the UTC Staff testimony is due simultaneously with PMSA testimony we will comment on the technical aspects of the costs as presented in PSP's Petition in our cross-answering testimony to UTC Staff.

Q: Please provide a short summary of all the various pieces of testimony that are to be provided by PMSA in response to the PSP Petition .

A: The testimony filed by PMSA in response to the PSP Petition includes:

- The testimony of Capt. Michael Moore, Vice President of PMSA, to address PMSA's positions in this matter and address matters of navigational safety, at Exhibit MM-1T *et seq*.
- The testimony of Chris Noble, Noble Actuarial Consulting LLC, to address issues regarding the pilot retirement program and PSP's proposed transition of the pilot retirement program, at Exhibit CN-1T *et seq*.

- The testimony of Jordan Royer, PMSA, to present true and correct copies of documents and evidence for the record and to support other testimony, at Exhibit JR-1T *et seq*.
- The testimony of Kathleen Nalty, Kathleen Nalty Consulting, to address issues regarding diversity, equity, and inclusion as alleged in PSP's Petition, at Exhibit KN-1T *et seq*.
- The testimony of Kathy Metcalf, Chamber of Shipping of America, to address issues regarding navigational safety as alleged in PSP's Petition, at Exhibit KJM-1T *et seq*.

3. TARIFF FORMULA & CALCULATION METHODOLOGIES

A. The current tariff formula used by the Commission should be retained.

Q: Does PMSA support the use of the existing tariff formula which was established by the Final Order of the Commission in the prior rate case (Order 09, TP-190976)?

A: Yes. PMSA supports the continued use of the existing tariff formula.

Q: Why does PMSA support the formula established in the prior rate case and recommend its continued use?

A: Pilotage rate regulation was moved to the UTC from the Board of Pilotage Commissioners ("BPC") by the legislature specifically to take advantage of and rely on the Commission's expertise to set fair, just, reasonable, and sufficient rates for regulated monopolies and transportation services. PSP, PMSA, and others participated in the Commission's open and public rulemaking to set up the rules which guided the hearing in the prior petition and in this petition. Then all the parties, including UTC Staff led by Danny Kermode, participated in the prior petition process. It was an exceptionally robust process in which all parties had numerous opportunities to comment on the proposed rate formula. And we all did.

The formula that was produced was what everyone noted at the time would be the initial baseline case for how to handle these cases going forward. Ultimately, the rate formula design which was chosen looked nearly identical to what UTC Staff originally proposed. Several of PMSA's suggested alternatives were rejected in this process. But, since none of the parties challenged the formula in the Final Order, Order 09, in TP-190976, we have all accepted that outcome. We all had participated in the initial rulemaking process and presented our arguments to the Commission in the initial rate case. PMSA respects the Commission and Staff expertise reflected in the outcome of the first case to decide the pilotage tariff.

Q: Does PMSA provide additional recommendations in this case that are consistent with the Commission's adopted formula?

A: Yes, we believe some tweaks and changes to the current tariff formula would improve this process and future outcomes, but they should be considered in a manner consistent with the base rate formula adopted by the Commission. Here, PSP as the moving party has the burden to prove that the tariff formula should be changed, and it has not. PMSA's proposals are included at the end of my testimony as future recommendations. None of these recommendations preclude or impact the continued usage of the adopted formula in the case before the Commission now.

Q: Does PMSA agree that the Commission's current rate formula relies on a standard legal interpretation of its definitions and terms regarding the fair, just, reasonable, and sufficient requirements which govern this process?

A: Yes. Both the original Joint Transportation Committee report and the legislation that moved rate-setting from the BPC to the Commission specifically recognize the expertise of the Commission in setting fair, just, reasonable, and sufficient rates for monopolies and transportation companies. RCW 81.116.020(3). And, Final Order 09 at ¶¶ 34–43 is absolutely clear on the legal grounds that the Commission uses for applying these standards. PMSA supports the Commission's legal conclusions for the parameters applied to the current rate formula for these terms of art. It is PMSA's unequivocal position that the rates which were adopted by the Commission in the prior rate case for pilotage services are fair, just, reasonable, and sufficient.

Q: Does PMSA have a general position about whether the formula as adopted in the prior rate case should be retained or altered?

A: The current formula covers all the factors necessary to provide PSP with a compensatory tariff and PSP's customers with the confidence that the tariff is fair, just, reasonable, and sufficient. Only two short years have elapsed since the initial Commission action on the very first petition for Puget Sound pilotage. And, in that period, the market has absorbed the impacts of the COVID-19 pandemic, which can only be described as one of the most shocking and unprecedented global disruptions to occur in a lifetime. Even under normal circumstances it would be exceptionally premature for the

Commission to walk away from the formula at this point, but especially given this recent experience, we believe it would be hard to draw any conclusions that the formula was in any way flawed. We believe that more time, ideally at least one full standard business cycle, should pass before the Commission entertains a proposal to go in an entirely different and new direction for the formula used to set pilot rates. The formula is simple and straightforward, and its use over varying times and circumstances should produce an informed history of its effectiveness at delivering fair, just, reasonable and sufficient rates.

B. The current tariff calculation methodologies used by the Commission should be retained.

Q: What rate-setting calculation methodologies did the Commission establish in the prior rate case?

A: These were the methods used to populate the formula categories of TDNI and expenses that were used by the Commission.

Q: Please provide some examples of these calculations used for TDNI and expenses.

A: Here are some examples of well thought out calculation methodologies which were used to evaluate and populate TDNI and expense categories in the prior rate case Order 09:

- The Number of Pilots methodology was to adopt the Staff Recommendation of taking five-year average assignment level and then divide projected assignments for the pro forma year by that average assignment level, with modifications for a multiple–year tariff. ¶¶ 85–86, 93, 101–102.

- The DNI methodology was to adopt the Staff Recommendation of taking a five-year average of actual DNI per active pilot and then appropriately adjust it for inflation. ¶ 140.
- Pilot medical insurance expenses are transferred from a PSP association expense to an individual pilot expense from compensation received through the DNI. ¶ 254.
- Pilot transportation expenses are limited to the traditional PSP past practice of reimbursing transportation costs based on the cost of taxi fare from PSP's Seattle office or the Port Angeles pilot station. ¶¶ 266–274.
- Callback assignment liabilities shall be deferred revenue subject to a full accrual method accounting, which will attribute costs at the time the expense was incurred and appropriately recognize the implications of creating a banked compensatory program. ¶¶ 466–467.

Q: Does PMSA support the continued use of these methodologies?

A: Yes.

Q: In the prior rate case, did the Commission adopt all of the suggestions of PMSA in establishing its formula?

A: No. In fact, many of PMSA's recommendations were specifically rejected.

Q: Why does PMSA now support the calculations established in the prior rate case and recommend their continued use?

A: Similar to our position regarding the formula as discussed above, all of the same parties to this proceeding participated in the prior case, and we all discussed the same issues, raised the same arguments, and presented virtually the same evidence and testimony. Unless the moving party, here PSP, submits in its petition some extraordinary argument or evidence requiring a new or different look at the same arguments, issues, and testimony, the Commission's determinations from the previous case should serve as an undisturbed baseline. As the previous rate case was the culmination of an exceptionally robust process in which all parties had numerous opportunities to comment on these methodologies, we would consider the natural position of the Commission would be to defer to its original determinations.

Q: Are there aspects to these rate-setting methodologies that PMSA thinks could be improved and changed?

A: Yes, as with the formula discussion above, we believe that there are some changes to the rate-setting methodologies that should be considered in future rate cases, but none of these recommendations should preclude or impact the continued use of the rate-setting methodologies adopted in the recent prior case. PMSA proposes them here for future and interim review only.

Q: Why else should the Commission continue to apply in this rate case the established rate-setting calculations to the established formula?

A: Perhaps most importantly, the rate-setting methodologies adopted in the prior rate case have yielded some incredibly accurate predictions. For example, as approved by the Commission in the prior rate case, the adopted methodology for forecasting assignments yields a prediction of 7,456.8 annual assignments in 2022.[1] In its Petition in this case, submitted during the middle of 2022, PSP predicted that 2022 would yield 7,442 assignments. *See* WP-IC C:6 ("projected 2022 revenue and assignments"). That means the Commission's adopted formula for 2022 was off by only 14 assignments out of 7,442. This is an incredible accuracy rate of 99.8% by the Commission.

C. PSP's many proposed changes to the Commission's calculations are not justified and are not supported by work papers as required by WAC 480-07-525(4)(s).

Q: In this petition, has PSP proposed changes to the calculations and formulas that the Commission used and established in the prior rate case?

A: Yes, PSP has proposed numerous adjustments not based on the calculations that were used by the Commission in the prior rate case. These include the following: the PSP calculation of DNI, which does not follow the DNI formula; the PSP treatment of callbacks, which does not follow the accrual

[1] TP-190976, Order 09, ¶ 85. As adopted, the Commission approved an average assignment level of 143.4 for purposes of rate-setting, and two-year rate plan of 50 FTE pilots in 2021, and 52 FTE pilots in 2022. (143.4 x 52 = 7,456.8). The original Staff Recommendation was a 143.4 average assignment level at 51.98 FTE. *Id.,* at ¶76.

accounting instruction of the Commission; the treatment of medical insurance, which PSP proposes to revert; and transportation expenses. PSP also proposes several automatic adjusters that deviate from calculation methodologies used in the prior rate case.

Q: Do the Commission's rules for general rate proceedings for marine pilotage services in Puget Sound at WAC 480-07-525 address the question of how work papers must be submitted when a party chooses to depart from the Commission's existing calculation methodologies?

A: Yes, WAC 480-07-525(4)(s) reads in pertinent part as follows:

"(s) Change in methodologies for adjustments. If a party proposes to calculate an adjustment in a manner different from the method that the commission most recently accepted or authorized for the petitioner, it must also present a work paper demonstrating how the adjustment would be calculated under the methodology previously accepted by the commission, and a brief narrative describing the change."

Q: For the several changes in methodologies proposed by PSP, has it submitted in testimony or otherwise identified any WAC 480-07-525(4)(s) work paper calculations?

A: No, I did not see any such work papers in the submissions that included the side-by-side comparison methodologies required here. For instance, with respect to the calculation for DNI proposed by PSP, PSP's testimony by Mr. David Lough at Exhibit DL-01T describes how it derived its proposed figure from a new methodology based on what other pilots make around the country, but there is no work paper submitted by Mr. Lough that compares this with calculations that would show what would otherwise be calculated under the existing formula. This comparison is also not included in the Pro Forma at Exhibit WB-05. The lack of comparative work papers also exists for all the auto-adjusters, including the proposed pension and pilot boat surcharges, the transportation expense, the medical insurance expense, and the callback expense.

Q: Has PSP failed to follow any other pertinent Commission rules for general rate proceedings for marine pilotage services in Puget Sound at WAC 480-07-525 that impact rate calculations ?

A: Yes, WAC 480-07-525(4)(m) requires that a moving party supply both a detailed accounting of the vessel assignments from twelve months before the filing AND "projected changes in vessel assignments." PSP has not provided in its work papers or in its pro forma any prospective estimates of changes in vessel assignments beyond 2022, a year which is subject to the current tariff.

For vessel projections to help populate the formula components of TDNI they need to be prospective and applicable to the calculations. In the prior rate case, PSP submitted the vessel traffic estimates of Dr. Khawaja to satisfy this requirement, and relatedly UTC Staff performed this task of its own volition by application of the VEAT to the number of vessel assignments to predict these projected changes. Here, PSP has provided no testimony with a future year projection of vessel assignments beyond 2022.

4. APPLYING THE FORMULA AND RATE-SETTING METHODOLOGIES TO THE PRESENT RATE CASE

Q: What does PMSA calculate for TDNI for Years 1, 2, and 3 of the Puget Sound Pilotage tariff?

A: PMSA calculates the following TDNIs based on application of the formula adopted by the Commission in the prior rate case:

Year 1 TDNI= $346,391 x 54.9 Pilots = $19,016,865

Year 2 TDNI = $357,475 x 55 Pilots = $19,661,125

Year 3 TDNI = $368,914 x 56 Pilots = $20,659,184

A. Calculating DNI as a component of TDNI.

Q: If applying the DNI formula adopted by the Commission, how does PSMA propose that the DNI be calculated for Years 1, 2, and 3 of a future tariff?

A: PMSA calculates a DNI for Year 1 of the Tariff of $346,391. On that basis, PMSA proposes a DNI for Year 2 of the Tariff of $357,475 and a DNI for Year 3 of the Tariff of $368,914.

Q: What is the basis used for the calculation of the proposed Year 1 DNI figure?

A: We calculated DNI for the 5-year period of 2017 to 2021 adjusting the DNI figures from PSP's Annual Financials for inflation in 2017, 2018, 2019, and 2020 to 2021 values, and increasing DNI by the value of the "expense" of callbacks, but subject to an adjustment for netting out inactive pilots, and reducing DNI by medical insurance premiums required by the UTC Order in the prior case. The DNI average after these adjustments for 2017-2021 was $346,391.

Please see attached "DNI Worksheet" (Exh. MM-3) for the specific methodologies and detailed numbers used to apply these calculations. Please see attached "Callback Worksheet" (Exh. MM-4) for the specific methodologies and detailed numbers used to apply these calculations.

Q: What was the basis for the inflation number applied to proposed Year 2 and Year 3 DNI figures?

A: The latest Kiplinger's Inflation Outlook predicted annual 2023 inflation rate is 3.2%. (Exh. MM-5) We propose an application of 50% of the predicted 2023 inflation rate to pilot DNI. The basis for this proposal is two-fold. First, CPI tracks the average increase in consumer prices for a fixed basket of goods that are typically representative of consumption for an average American household. As high–income individuals, pilots' net income is well in excess of the traditional CPI valuation. Moreover, we believe that, because of the weighting on tonnage in the formula as adopted by the Commission in the prior rate hearing, as opposed to weighting on hours piloting as proposed by the UTC Staff, natural increases in revenue per assignment will continue to occur as the average size of vessels piloted increases. The natural growth of vessel size pace should proceed at a rate higher than the discounted value of inflation.

As a result, PMSA proposes a 1.6% increase per year to account for inflation, which we applied on a compounding basis to calculate Year 2 and Year 3 DNI.

B. Calculating the number of pilots and average assignment levels as a component of TDNI.

Q: What does PMSA propose for the number of pilots based on the prior case formula?

A: PMSA proposes:

54.9 Pilots for Year 1 of the Tariff.

55 Pilots for Year 2 of the Tariff.

56 Pilots for Year 3 of the Tariff.

Q: What is the basis of calculations used for the proposed Pilot figures?

A: The acceptable range of outcomes for the number of pilots is a range from a floor of the actual number of licensees and a ceiling of the approved number of licensees. TP-190976, Exh. SS-1T 10:17-11:2. The current number of actual licensees is 53, and the maximum number of approved licensees by the Board of Pilotage Commissioners is 56.

We started with the working pilots formula of Pilots = Ap ÷ AAL. We calculated the 5-year AAL of 138.9, which is divided into the 2022 number of pilotage assignments of 7,483, and the resulting calculation was 53.9 pilots. Adding one additional pilot for the PSP President is 54.9 pilots.

Please see attached "Number of Pilots Worksheet" (Exh. MM-6) for the specific methodologies and detailed numbers.

Q: What was the basis for the adjustments of these numbers for Years 1, 2, and 3?

A: The allowable range of license outcomes is 53 to 56. The current number of licensees is 53. For a three-year recommendation to increase the number of pilots in the formula and grow revenue each year and end at the maximum allowable range, the years included 54, 55, and 56. 54.9 is the most appropriate formula-based starting point since it is the actual number of pilots derived by the formula's calculation.

Q: Why does PMSA disagree with the usage of 56 pilots for Year 1 or Year 2 of the formula?

A: Based on the inaccuracies of PSP's estimates in initial filing, we do not find compelling PSP's estimates that it will be immediately at 56 pilots in Year 1 of the new tariff. As of December 2022, there were still only 53 licensed pilots, contrary to the estimates of pilot license growth made by PSP in its initial filing in June. Instead of basing the number for Year 1 on an educated guess, the better policy is to unambiguously apply the formula for working pilot calculation, which here results in 53.9 working pilots. For Year 2, PMSA proposes that the pilotage corps must logically first reach 55 pilots before it eventually reaches 56 pilots. For Year 3, PMSA acknowledges the historically high popularity of the BPC training program, with many trainees both on the waiting list and already training in the training program. This, coupled with the high retention rates of existing licensees, leads us to expect PSP to reach 56 pilots over the course of this upcoming three-year period.

Q: Has PSP provided a projection of future vessel assignments pursuant to WAC 480-07-525(4)(m) from which it might draw arguments regarding the future number of pilots?

A: No, PSP has not provided vessel assignment projections past 2022.

C. Expenses.

1. PSP's proposed increases in operating expenses are excessive. The growth of expenses that result in payments to pilots should not be externalized to ratepayers as proposed by PSP.

Q: Please describe PMSA's opinion on the general state of PSP's operating expenses.

A: PSP's operating expenses are skyrocketing. In the current general rate case, PSP is now seeking the equivalent of a one-year increase of 21.92%. (Exh. WTB-05, "Results of Ops," K:75) All told, PSP is seeking a tariff which pays for expenses which are 80% higher than they were 10 years ago. Usually businesses have an incentive to reduce their expenses, but PSP's spending is driven primarily by "expenses" that they have a direct interest in growing because the payments are not made to third parties but rather payments paid to pilots. Over the past 5 years, these payments from the pilots to themselves have grown by 50%. These costs need to be brought under control. The Commission should stop these "expenses" from being externalized to ratepayers.

a. PSP's skyrocketing expenses are not justified or justifiable.

Q: When did PSP's operating expenses begin to skyrocket?

A: There is a clear delineating date for a distinct change in PSP's approach to expenses: 2018, the year that the legislature passed SSB 6519 (Chapter 107, Laws of 2018), which transferred ratemaking authority from the BPC to the Commission. As shown in Figure A (Exh. MM-7) the change in PSP's approach to the management of its expenses is a stark and unmistakable break from its historical trend:

FIGURE A

PSP's pro forma requested year-over-year increase in this case amounts to $3,441,505, which is a one-time growth in expenses of 21.92%. This rate of expense growth is 10x greater than the annual average increase of just five years ago. Prior to the ratemaking authority transfer, the average rate of growth per year from 2011 to 2018 was 2.1% per year.

When comparing the 2022 PSP activity levels and requested $19.1 million in expenses with 2018 activity levels, the last year before the transfer of ratemaking to the UTC, the growth in expenses and the disconnect from assignments and the number of pilots is undeniable. As demonstrated in Figure B (Exh. MM-8), while assignments and the number of pilots have grown modestly by 2.17% and 3.38% respectively, Operating Expenses have rocketed ahead at 53.48% from 2018 to 2022:

2018 v 2022 Expenses Comparison	**2018**	**Pro Forma (2022)**	**Δ**
Operating Expenses	$12,470,372	$19,139,323	*53.48%*
Assignments	7,324	7,483	*2.17%*
Number of Pilots	50.3	52	*3.38%*
Expenses per Assignment	$1,702.67	$2,557.71	*50.22%*
Expenses per Pilot	$247,919.92	$368,063.90	*48.46%*

FIGURE B

Q: Has PSP addressed this overall level of spending on Operating Expenses or advanced a narrative about why it has so abjectly failed to manage its costs over the past five years?

A: No, PSP has not addressed this at all. These overall rates of growth have diverged from the historic drivers of growth in spending that are intuitive and easy to understand like assignments or the number of pilots.

Q: Please explain why spending would logically track growth in assignments or in the number of pilots?

A: Some of the variable costs of running the pilotage business can ebb and flow with the amount of business and the number of assignments that are being conducted; with more vessel calls, there are more transportation costs, more re-positionings, more pilot boat fuel costs, and more pilot station costs. Also, some costs are variable with the number of pilots such as license fees, more insurance costs, more transportation costs, and so on.

Q: Does the 50% spending increase track these factors now?

A: No. Between 2018 and 2022 these factors grew only 2.2% and 3.4%. That's not the average growth per year—that's their growth total. And, it leaves us wondering, why does servicing roughly the same number of vessel customers, with roughly the same sized labor force, cost 50% more—$6.7 million more—in 2023 than in 2018?

Q: What does PMSA ask that the Commission do to address these skyrocketing costs?

A: We would ask the Commission to be extra judicious and critical when scrutinizing the costs and PSP's request for ever–growing cost recovery considering its unprecedented and unsustainable spending patterns. PSP is a monopoly. Without the proper level of scrutiny and regulatory oversight, monopolies tend to be rent seekers that exploit their market power to pass along otherwise unjustifiable expenses to their customers. To that end, while we believe that the cost causation principle is the correct manner in which to regulate PSP and set its rates, we also do not believe that it was a coincidence that the first year to see their expenses spike was 2019, which also happened to be the first test year for their first rate case in front of the Commission. If PSP envisions that most or all its expenses will be covered by increases in tariff, there will be no incentive to manage expenses, especially discretionary spending designed to increase distributions to pilots.

Q: What would the basis for this type of scrutiny be from the Commission?

A: As the Commission very clearly stated in Order 09 from the prior rate hearing, at ¶ 39, "'The fundamental economic goal of regulation is straightforward: to mimic a competitive market outcome, even when the underlying market is not competitive.' The Commission seeks this efficient outcome by setting a reasonable rate of return that encourages prudent decision-making in monopoly enterprises."

Q: How could rate setting encourage prudent decision-making in this case?

A: In a competitive marketplace, if a partnership with relatively small overhead but a personnel-heavy partner corps and minor capital costs found itself in a situation with flat growth in customers and revenues but with a steady workforce to maintain, what would happen if it insisted on moving ahead with a spending spree that grew its expenses by over 50%?

In a competitive market this money could not come from customers with flat demand. Which means that this additional spending could only come from three places on this partnership's balance sheet: cash, equity, or the partners' residual profits.

The Commission should make it clear to PSP that their increased spending will likewise not be externalized to their ratepayers, and that it is no longer acceptable for the pilots to refuse to get their largest expense categories in order and under control.

b. The primary recipients of the largest "expense" categories driving the PSP spending spree are PSP members.

Q: What are PSP's three largest expense categories?

A: According to PSP's 2021 Financials (Exh. JJN-02 at 7, 29-31), PSP's three largest single expense categories are:

- Puget Sound retirement: $5,517,478 (34.3% of total 2021 expenses)
- Medical insurance – pilots: $1,644,567 (10.2% of total 2021 expenses)
- Travel and promotion: $1,292,223 (8.0% of total 2021 expenses)

Taken together these three individual categories make up over half of PSP's expenses (52.5%).

Q: What is unique about these categories of expenses?

A: The direct recipients or beneficiaries of the spending in these categories are either PSP members or retired PSP members. PSP retirement is paid to PSP retirees. Pilot medical insurance is paid to or on behalf of individual pilots. And travel and promotion is a new consolidated category which now includes all transportation payments made directly to pilots, in addition to other office– and administrative–related travel and promotion.

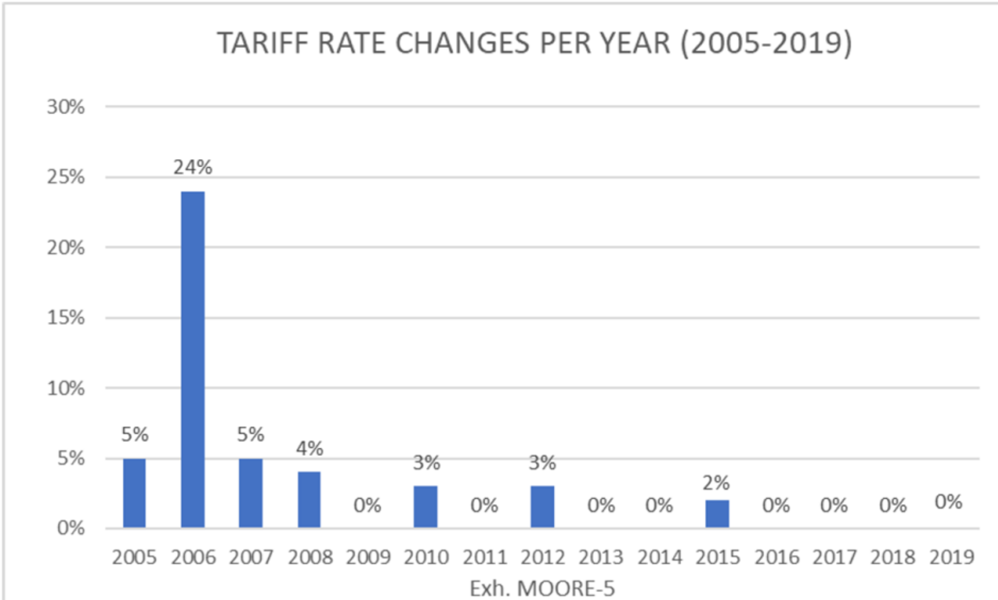
Q: Does PSP have an incentive to lower the spending on these categories?

A: Apparently not! Or at least not since 2018. Since these are payments made to themselves and their colleagues, and they are under the impression that they can pass along these payments to themselves under the guise of expenses in addition to DNI, they have demonstrated that they have an incentive to grow these payments.

Q: If overall tariff levels were held steady, would PSP have an incentive to manage their spending?

A: Yes, absolutely. The steady PSP management of expenses from 2011 to 2018 did not happen by mistake. It occurred in a rate environment where, although the vessel marketplace grew pilot revenues naturally through higher revenue per assignment as a result of larger tonnage ship growth for many years, PSP often received no rate increase at all. Between 2011 and 2019 PSP only saw rates increase twice, and by modest amounts. See TP-190976, Exh. MM-1Tr 14:5-16, Figure C, Exh. MM-5:

Figure C. Tariff Rate Changes Per Year (2005-2019)



TP-190976, FIGURE C

Q: Is PMSA advocating for 0% rate increases in this case to create uncertainty in cost recovery for PSP?

A: No, true cost causation regulation for actual expenses should still be the goal of this rate-setting, and we would expect to see some natural and regular growth in expenses reflected in minor and reasonable increases in the tariff from time to time in general rate cases. And, because the tariff is still built around tonnage, we believe that revenue per assignment increases will continue their historical trend with larger tonnage ships which are continuing to be introduced to market in the container and cruise sectors. But, in this case, with respect to these “expenses” that are really payments from PSP to its own members, we are asking for the Commission to affirm and expand on the portions of the rate structure that it started to create in the prior rate case. If kept intact these would create incentives for PSP to logically and effectively manage their costs similar to the outcomes under the prior ratesetting processes at the BPC.

c. The risks of uncontrolled and growing expenses were recognized and addressed in the prior rate case order.

Q: Has the Commission already recognized that these cost drivers need to be managed by PSP?

A: Yes, and the Commission began to construct these incentives for PSP when it adopted Order 09 in the prior rate case.

Q: How did the Commission begin to direct PSP to address the treatment of these "expenses" in the prior rate order?

A: The Commission directed specific treatments with respect to all three of these categories of spending.

Regarding the "Puget Sound retirement" cost item, the single largest expense item for PSP, the Commission specifically directed that PSP begin to plan a transition to full accrual accounting, a fully-funded plan, and to consider the issue of pilot contributions to the retirement program. This was clearly required in the Order, at ¶ 191, which stated the following:

> 191. We adopt Staff's recommendation to maintain the current pay-as-you-go program, but order PSP to initiate discussions for the purpose of developing a plan to transition to a fully funded, defined-benefit retirement plan, as well as full accrual accounting. By way of guidance, the retirement plan discussions should include, as PSP proposes, a comprehensive stakeholder evaluation and a participation study. We further require the

> discussions to address whether active pilots should be required to contribute directly to PSP's retirement fund.

Regarding the "Medical insurance – pilots" cost item, the second largest expense item for PSP, the Commission specifically directed that PSP begin to transition these costs to the pilots individually instead of as an association "expense," first by reducing this item by 50% in 2022 with the expectation that in the next general rate case the balance would be phased out as well. This was clearly required in the Order, at ¶¶ 253–254, which states in part:

> 253. …It is fair, just, and reasonable for these independent contractors to transition to paying for medical coverage through their DNI rather than PSP paying that expense on the pilots' behalf from PSP's organizational operating expenses.
>
> 254. For these reasons, we determine that PSP should begin transitioning pilot medical insurance expenses directly to the pilots, who should pay a portion of their individual premiums from their DNI distribution.
>
> …The remaining 50 percent of pilot medical insurance expenses should be accounted for as pilot compensation rather than an operating expense, as they are now. After the two year rate plan, we expect PSP pilots to fully fund their medical insurance expenses from the compensation received through the DNI.

Regarding "Travel and promotion," while this item was not where PSP included its transportation costs in the prior rate case, the Commission specifically rejected the requests of PSP to increase the basis of transportation reimbursements to include a broad range of transportation costs including travel costs to and from their homes to jobs, instead of from the PSP office based on the cost of taxi fare (at ¶ 268) and found little justification for "a more generous system of reimbursement for pilot transportation expenses." *Id.* at ¶ 269.

d. The Commission should enforce its prior Order and reject PSP's requests to undo that Order.

Q: How has PSP responded to these directions in the prior Order?

A: It is either ignoring these conclusions in the prior Order or asking the Commission to reverse itself.

Q: In what ways has PSP ignored the prior Order or asked the Commission to reverse itself with respect to the "Puget Sound retirement" expense?

A: The Order at ¶ 191 ordered PSP to develop a plan to transition "the current pay-as-you-go program" to a "fully funded, defined-benefit retirement plan, as well as full accrual accounting." PSP has done neither. There is no plan for a transition of the current pay-as-you-go program to a fully funded plan, and PSP did not employ full accrual accounting of the current pay-as-you-go program in its financials or describe how it intends to employ full accrual accounting in the future. To the contrary, while the Commission asked for a plan to transition out of the current plan, PSP specifically focused only on future plan development and deliberately left the existing pay-as-you-go program liabilities out of its proposed plan, thus providing absolutely no recommendation with respect to the treatment of the current program's costs or management. Instead, PSP proposed a surcharge that will increase the costs on ratepayers of the "run out of Pay-as-you-go pension benefits"

(Exh. IC-01T 31:7-10) without any plan to transition any such liabilities to a funded plan or to transition to full accrual accounting in the process.

Order 09 at ¶191 also further required PSP to assess the question of whether active pilots should be required to contribute directly to a PSP retirement fund. PSP has not complied with this requirement, and it has not described in this general rate case why it did not evaluate this option. I offer much more commentary on PSP's inability to maintain "discussions" with stakeholders and the lack of the creation of a "stakeholder evaluation and a participation study" further in my testimony in detail. But in short, PSP did not comply with the Order.

Q: Has PSP asked for the Commission to reverse itself with respect to the "Medical insurance - pilots" expense?

A: Yes, at Exhibit WTB-04T 10:8-11, PSP asks the Commission to relitigate this issue as "PSP respectfully requests that the commission reconsider this directive based on the new evidence presented in this case by several PSP witnesses." The "new evidence"? Employees and working partners in partnerships often have medical insurance expenses paid by employers and their partnership. This is not much of a revelation, especially since the Commission laid out in detail its logic for why, as independent contractors, non-partners, and members of an association whose bylaws specify that individuals should be working on their own account, the pilots should be internalizing this cost. Because the Commission clearly stated that it expected pilots to fund their own medical insurance expenses through their DNI after the end of Year 2 of the current tariff, the pilot's pro-forma should show a $0 for pilots' medical insurance. Instead, not only does the pro-forma show a balance for this item, it adds another nearly quarter of a million dollars to the expense, totaling $1,885,345. (Exh. WTB-05, "Pilot Medical" tab, G:6-8).

Q: In what ways has PSP asked for the Commission to reverse itself with respect to the "Travel and promotion" expense related to pilot transportation charges?

A: As with medical insurance, PSP seeks to relitigate this question. This time it doesn't offer any "new evidence" but instead takes the tack that the Commission acted in error because there was "some confusion in the inaugural case." Exh. WTB-04T 16:4-5. PSP then goes on to make the exact same arguments about why the definition of transportation costs should be broadened: it is the argument to include "the actual transportation charges invoiced." Exh. WTB-04T 16:22.

The Commission clearly enunciated the logic behind its decision to maintain the historical methodology for these expenses in the prior Order. The Commission concluded that PSP had not carried its burden to demonstrate the need to broaden the costs of pilot transportation to include commute costs and travel back and forth to a pilot's home as opposed to the fixed costs associated with either the PSP Seattle Office or the pilot station in Port Angeles.

When asked in this case by UTC Staff to produce representative samples of invoices that showed what the "actual transportation charges invoiced" included, PSP produced invoices that were redacted such that the original pick-up and drop-off locations of pilot transportation to and from jobs were not disclosed. See Exh. MM-9, PSP response to Staff DR 36a. The only reason for such a redaction is that these actual transportation charges once again include a broadening of the cost to ratepayers by including transportation to and from pilots' personal residences. PSP's testimony is silent on this point.

Q: How should the Commission address PSP's responses to its treatment of these expense items in the prior Order?

A: The Commission should stay the course and reject requests by PSP to back down from its prior Order. The prior Order, with its associated findings and conclusions regarding the formula, rate-setting methodologies, and expenses, was comprehensive, foundational, and the product of extensive scrutiny and litigation among all the parties. Given this, the Commission's Order from the prior case should not be disturbed unless a compelling reason is shown by PSP.

PSP has not offered any compelling reason to upset the prior Order. Regarding its retirement expenses, PSP offers no excuse for why it has not addressed the questions of existing pay-as-you-go retirement liabilities, a transition to accrual accounting for this plan, or pilot contributions towards pilots' own retirement. The Commission should not reward this behavior with a surcharge that will only increase costs on ratepayers.

PSP seeks to relitigate the questions of pilot medical insurance and transportation but provides no new bases or evidence of note. The Commission did not gloss over the question of employment or partnership status in the prior Order regarding medical insurance' rather it made those distinctions central to its reasoning and logic for directing the removal of the medical insurance expense item. Likewise, the Commission's deliberations on transportation expenses were not the product of "confusion": the points were debated, all parties weighed in, and the Commission concluded that no change in the methodology from the prior tariff practice was justified.

Q: In PMSA's opinion, is there any justification for the Commission to back away from the initial steps that it has taken to begin to create incentives for PSP to better manage these "expenses" that are payments to pilots and retired pilots?

A: No, and if anything, these steps should be accelerated in order to protect ratepayers from PSP's aggressive request to increase expenses by over $3.4 million. On its face, proposing a one-time 21.9% increase to expenses begins to stretch the credulity that such a charge is really based on a cost causation model. When we consider that more than half of these costs will once again go back into the pockets of pilots, and not to third–party vendors or service providers, it is clear that the Commission needs to stay the course and send a clear signal to PSP that it needs to prudently manage expenses instead of asking for a hand-out.

e. The Commission should expand the current treatment of medical insurance (i.e., moving the individual costs of pilots to DNI and out of expenses) to additional expense categories.

Q: Are there other "expenses" of PSP that involve payments to pilots that could be moved out of PSP's operating expenses?

A: Yes, in addition to medical insurance for pilots, the Commission should consider applying the same logic to other categories of expenses.

Q: Please describe whether the current expense item for pilot retirement would be a good candidate for such a treatment.

A: Yes, this entire amount could be removed from the PSP operating expense category and instead credited and moved to individual pilot DNI. This would significantly reduce PSP overhead. It would also reflect the true nature of the pilot retirement program as an agreement by individual contractors to pool their revenues for the purpose of building deferred compensation amongst themselves. It would move it away from the inaccurate conception of this program as being paid by PSP to pilots as if PSP were the pilots' employer. Obviously, no such employer obligation exists. PSP is not a signatory to any such agreement. PSP is merely the vessel for the distribution of these payments amongst pilots as it is not actually an "expense." As the Commission already directed in ¶ 191 of the prior rate case Order, there needs to be a plan for full accrual accounting for these liabilities moving forward. At the time that new liabilities become subject to the new full accrual accounting, the existing "expenses" for retirement should also be moved to DNI of individual pilots.

Q: Please describe another such expense.

A: PSP carries many different types of insurance policies. See Exh. MM-10, PSP Response to PMSA DR 457. Most of these cover the liability of PSP and its operations and assets, for example to cover liability regarding pilot boats, the pilot station premises, or directors and officers coverage. These are all properly handled as PSP expenses and should remain PSP expenses.

But PSP also carries "Pilots License/Legal Liability" and "Excess Pilots Legal Liability" policies. As described, these policies are not for the benefit of PSP; rather they are designed to cover the following:

> "Pilots' Loss of Income/Pilots' Legal Liability, License Protection & Defense Costs, Fines & Penalties, Personal Effects, Criminal Acts Defense Costs, Criminal Acts Fines & Penalties including fines & penalties, subsistence, miscellaneous expense, personal effects, criminal Acts Defense Costs; Criminal Acts Fines & Penalties"

While this seems like prudent coverage for individual pilots to carry to protect themselves from potential liability and risks as they perform their pilotage services, these risks are personal to their license alone, and their license duties are performed as an independent contractor, not as a partner or employee of PSP. Subject to our comments on this item specifically regarding coverage below, to the extent that these Pilots License and Legal Liability policies are administered by PSP, that is still acceptable to PMSA. However, the costs of these policies, whether paid to PSP under a master contract or directly to the insurance underwriters by individual pilots, should be transferred to pilot DNI and not accounted for as a PSP expense.

Q: Please describe another such expense.

A: The BPC's individual pilot license fees should also be transferred to pilot DNI. As acknowledged by PSP, "[e]ach PSP pilot is required to pay to the Board of Pilotage Commissioners a fee when they are licensed and for every year in which a pilot provides pilotage services." Exh. WTB-04T 11:24-26. These personal license renewal fees are an expense of each individual pilot and not properly a PSP expense.

Q: Are there any other such expenses?

A: Other candidates for this treatment include computer expenses when for individual pilots' computers, including portable pilot units; the payments for individual pilot transportation to jobs; and Port Angeles food and lodging.

Q: How would these reductions in expenses impact DNI for pilots?

A: This is where the Commission can create positive and reinforcing incentives to drive efficiency and cost management into the system. For every cost that the Commission reduces for PSP, the Commission would naturally increase net income to individual pilots by an equal amount (if justified). To ratepayers this would be transparent, as the cumulative amount of every dollar that PSP would "save" in expenses would result in an equal dollar of revenue accounted for as a distribution of DNI. This will reinforce the incentive principle of savings and efficiency: once individual pilots realize that this money is available as DNI if not spent elsewhere, it creates an incentive for PSP and members to manage such costs in order to increase members' residual revenues. As pointed out by the Commission regarding medical insurance, the individual pilots then have the further incentive to reduce the costs and overhead of these expenses because these are no longer "free" pass-through "expenses" but rather in the hands of the independent contractor pilots.

2. PMSA's positions on specific expense items.

Q: Does PMSA have specific responses to additional PSP expense proposals?

A: Yes, PMSA has positions with respect to other PSP expense proposals as described in this section below.

Q: Are these positions intended to be the final word on all PSP expenses by PMSA?

A: No, we are looking to UTC Staff's testimony on their professional opinions and approaches to the management of these expenses to help inform our final positions. What we learned from the prior rate case was that UTC Staff's team of professional accountants and its expertise in evaluating costs was invaluable to our understanding of PSP's proposal, especially with respect to critical accrual accounting concepts like depreciation. PMSA intends to respond to issues as they are identified by the UTC Staff testimony. If we need to revise, extend, or reverse any of these initial impressions of the PSP proposal after seeing the UTC Staff testimony, we will do so in our cross-answering testimony.

a. Pilot boat life extension projects.

Q: Did PSP include a pro forma adjustment for either the 2024 or the 2026 pilot boat life extension projects?

A: No, I have not seen or found any accounting or projection of the impact of this project on ratepayers in the pro forma or work papers.

Q: What is the significance of the lack of an accounting of costs in a pro forma regarding these expenses?

A: Because these expenses are completely unaccounted for in the pro forma, PMSA cannot support the inclusion of this cost item in a proposed tariff.

Q: Please describe PMSA's position with respect to PSP's request to fund pilot boat life extension projects for the pilot boats *Juan de Fuca* and *Puget Sound*.

A: PMSA supports the PSP proposal in concept as the evaluation of the cost-effectiveness of boat life extensions as opposed to new boat purchases and from the materials provided is sound. And we agree that the initial cost-effectiveness estimates of approximately $2.2 million are reasonable. However, PMSA can only conditionally support the PSP recommendation for a 2024 life extension retrofit for the pilot boat *Juan de Fuca* subject to the balance of the comments in this testimony. Likewise, PMSA can only conditionally support the 2026 life extension retrofit for the pilot boat *Puget Sound* subject to the balance of the comments in this testimony being agreed to in the case that 2026 is included as a tariff year in the final order in this case. In addition, if 2026 is not included as a tariff year in the final order, then PMSA would also oppose including any provision for the 2026 life extension retrofit for the pilot boat *Puget Sound* in an order.

Q: Does PMSA agree with the automatic adjuster for pilot boat capital costs as proposed?

A: No, we do not agree with funding the 2024 or the 2026 life extension retrofit through PSP's proposed automatic adjuster for pilot boat capital costs. As further discussed in my testimony below regarding all of the PSP proposed automatic adjusters, PSP has not submitted any pro forma or workpaper data providing any detail to justify any funding in this regard. If automatic adjusters for pilot boats are adopted at this time, then PMSA would withdraw its conditional support for the *Juan de Fuca* and *Puget Sound* retrofit projects.

Q: Does PMSA propose an alternative process for moving forward with the pilot boat retrofit projects?

A: Yes, I am providing recommendations at the conclusion of my testimony below for consideration, including a proposal regarding a path to move forward with automatic adjusters for pilot boat capital costs.

Q: Do you have a position on the useful life of the pilot boat and how that might impact capital costs?

A: Yes. The pilot boat will have a useful life with a multi-year range. Considering this issue in the future, the cost recovery must necessarily be consistent with the need to spread cost recovery for a large capital item over a multi-year recovery period. The recovery period should reflect the expected lifetime of the asset or the period over which the cost is financed. In no circumstances should the cost recovery period be accelerated at a rate faster than the IRS depreciation schedule for this asset. As described in our recommendations below, at the appropriate time the Commission should adopt controlling language in the final order adopting this tariff that requires PSP to perform a full accounting of final retrofit and refit costs, submit an independent third–party review by a naval architect to evaluate the final costs, and present a conclusion regarding reasonableness of costs.

b. Pilot boat fuel.

Q: Did PSP include a pro forma adjustment for pilot boat fuel expenses?

A: Yes, at Exhibit WTB-05, tab "Fuel Expense" H:30-K33, the adjustment is as follows:

Pro Forma Adjustment		
Total 2021 Gallons	97,727.40	
PPG - 6/2022	$5.86	most recent ppg
	$572,682.56	

Q: Does PMSA agree with this adjustment for Boat Fuel?

A: We agree with the structure proposed for the Pro Forma, but the numbers used in the adjustment should be updated as follows:

Pro Forma Adjustment (*Updated*)		
Total *Annual Average* Gallons *(2017-2021)*	102,598.8	
PPG – *12/31/2022*	$4.39	most recent ppg
	$450,408.73	

Q: Please describe the adjustments that you are recommending here.

A: The final pro forma adjustment should be $450,408.73, revised downwards from $572,682.56. This is based on application of the following two adjustments:

Fuel usage should be based not solely on 2021 but on the average fuel use of the past 5 years to fully address variations in vessel traffic over time and provide a better approximation of the demand for pilot boat use, which is a direct function of providing pilotage services to vessels and therefore rises and falls with assignment volumes. Based on Capt. Semler's testimony at Exhibit JS-05, which includes an accounting of pilot boat fuel from 2017 to 2021, the 5-year annual average for pilot boat fuel consumption is 102,598.8 gallons of fuel per year. This annual average is the more appropriate number to use rather than relying solely on the 2021.

We agree with the PSP pro forma that the "most recent ppg" should be used. The most recent price per gallon for boat fuel that PMSA has received from PSP is from December 31, 2022, and that price is $4.39 per gallon. Exh. MM-11 (PSP Response to PMSA DR 458).

c. Attorneys' fees.

Q: Did PSP include a pro forma adjustment for legal expenses?

A: Yes, at Exhibit WTB-05, tab "Legal Exp" and tab "190976 Amort Legal & Cons."

Q: Does PMSA have a position on PSP legal expenses?

A: Yes, we are concerned with the level of attorneys' fees associated with both general expenses and UTC legal costs.

Q: Please describe your concerns with escalation of "general" attorneys' fees.

A: PMSA is concerned with the rapid escalation of "General" attorneys' fees because this rapid escalation raises the question of whether PSP is prudently managing these expenses. When one considers the last five data points available to PMSA that separate out "general" attorneys' fees from UTC-related fees, the trend for this expense category is alarming and out of proportion with the general operations of PSP. As shown in this chart, the average growth rate over our last five data points is 55% per "year" (Figure C, Exh. MM-12):

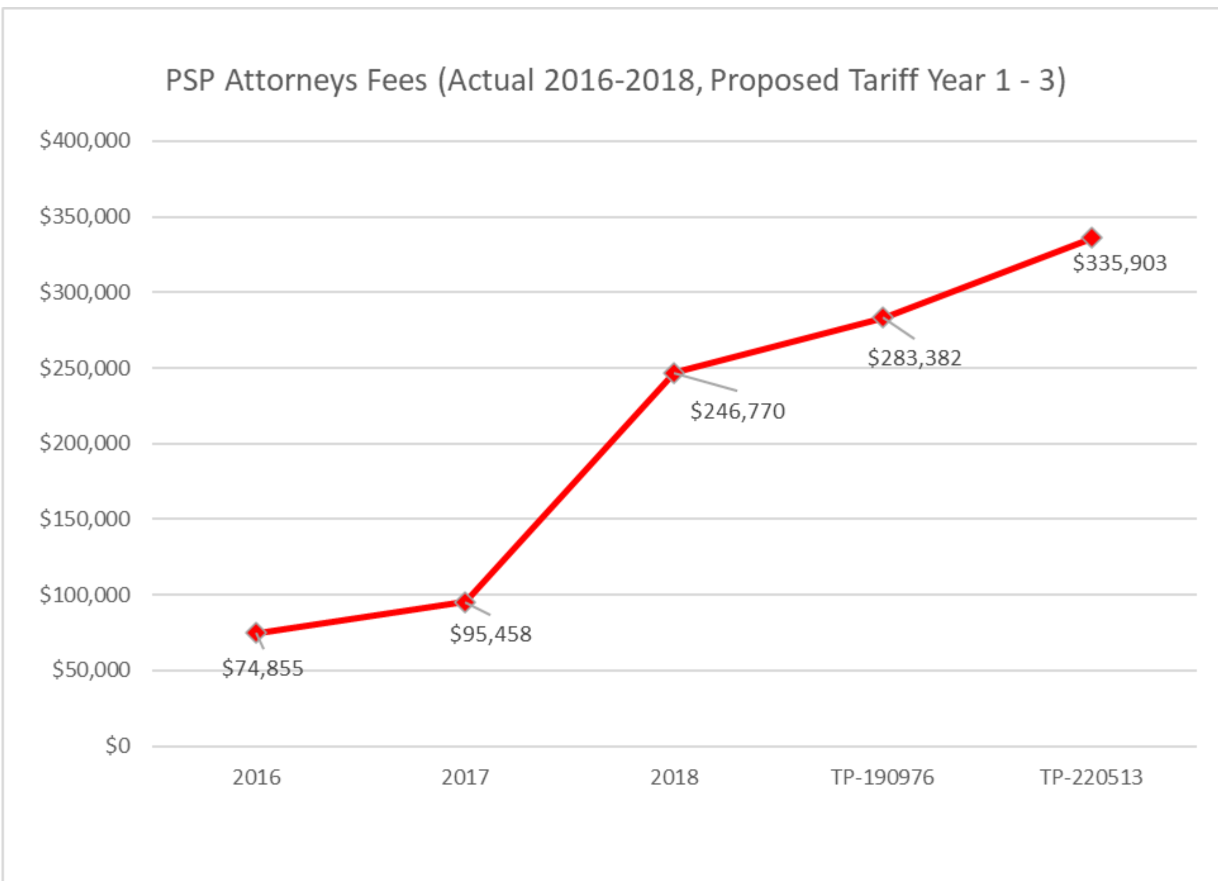


FIGURE C

Q: Why are attorneys' fees so high from 2018 to present compared to 2016 and 2017?

A: We don't know. This is one of the primary reasons of concern for this expense category. As with other spending categories, pilot expenses started accelerating rapidly after the ratemaking functions of BPC were moved to the Commission in 2018. In the prior UTC case and in this case, PSP has segregated "general legal" from "UTC legal." So the 2018 shift regarding the legal expenses associated with ratesetting should not have resulted in higher expenses in the category of "general legal" expenses. It is impossible for us to know how accurate or precisely the costs have been segregated. As demonstrated by PSP's response to UTC Staff DR 45-3-c (Exh. MM-13), there is no transparency into this accounting.

Q: Aside from UTC-related charges, are you aware of any significant changes of note in the rules or regulations governing the specific business of pilots between 2016 and the present that would justify an increase in legal costs of roughly 350%?

A: No, piloting and the legal structure surrounding it has been essentially the same since 2016. The BPC has adopted several rules of note, but it has not adopted any major or significant regulations which were of such a controversial nature that they would create exorbitant legal expenses in either the adoption, implementation, or enforcement of the rules. Aside from the legislation that created this ratemaking process at the Commission, the Legislature has not adopted any particularly impactful statutes related to pilotage. The US Coast Guard has not adopted any particularly impactful or significant regulations related to the regulation of pilotage. The US Congress has not acted to change the contours of pilotage.

Q: Are you aware of any litigation of note that involved PSP in 2018, 2019, 2020, or 2021?

A: No, nor is any discussed to justify current costs in the PSP petition. There are no notes in the pro forma regarding such adjustments to those costs and whether they would be expected to continue in future years.

Q: Is it possible to tell from PSP's filings how they are utilizing their attorneys and whether or not these costs are being prudently managed?

A: No. While the pro forma makes several distinctions between general and UTC costs and then further breaks down general and labor–related expenses, it is not possible to know from the billing listings in the pro forma how PSP is utilizing its counsel and why its expenses are so high. And as noted above, when asked to provide such billing details, PSP's responses (Exh. MM-13) yielded no transparency into this accounting.

Q: Is there a third-party benchmark that PMSA has found to compare the growth of PSP's attorney's fees against?

A: Yes, relying on the 2021 CLIO Legal Trends Report "Billable Hour Index" it is clear that from 2010 to 2021, that the average cost of law firm legal services have increased at a rate roughly equivalent to the rate of growth in the Consumer Price Index (Figure D, Exh. MM-14):

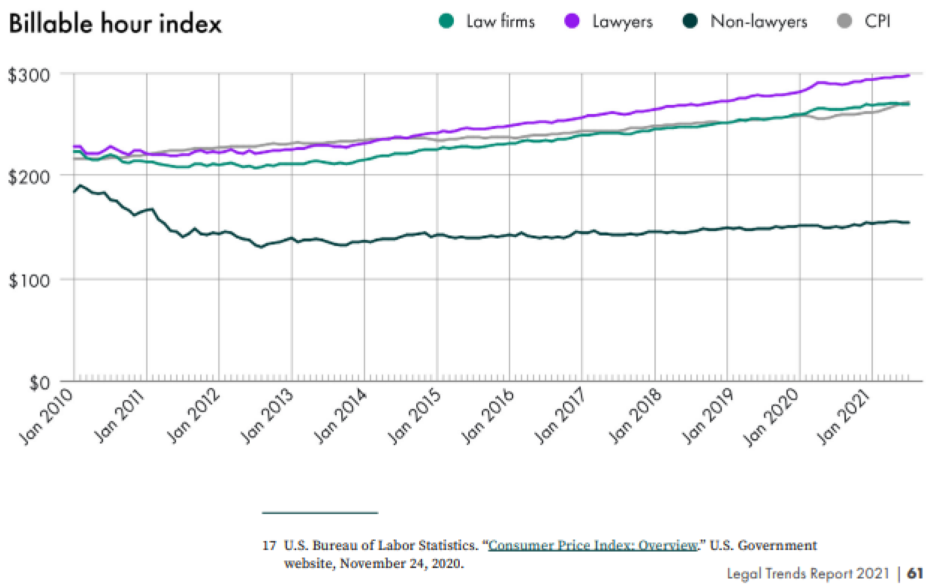


FIGURE D

Q: If one were to take the 2016 attorneys' fees and adjust them by CPI to 2022 levels what would these costs be?

A: Approximately $94,000 according to the Bureau of Labor Statistics CPI Inflation Calculator.

Q: Does PMSA have reason to believe that PSP is being overbilled by its outside counsel?

A: No, and PMSA does not allege that here. The precise point of including the CPI evidence is to show that if PSP were hiring counsel to handle its affairs the same way as it did in 2016, the total billing would only total just under $100,000 per year. Obviously at more than three times this amount, the issue isn't likely to be billing rates. Rather, it is the overall reliance by PSP on attorneys to handle its affairs and the costs associated with it.

Q: Does PMSA have reason to believe that attorney services are being used for regular business operations of PSP?

A: Yes. Although we don't have much visibility into the internal workings of PSP, as I testified to in the prior case, TP-190976 Exh. MM-1Tr. 112-113, outside counsel for PSP at that time were making a habit of addressing non-legal issues and attending regular business meetings of the BPC. This approach by PSP included using outside counsel to address workload and number of pilots issues that were historically handled by the PSP Executive Director or President. In our recent experience (see BPC meeting attendee lists at Exhibit JR-19), PSP continues to have legal counsel attend regular business meetings of the BPC in which no appearance is necessary and no business by counsel needed to be attended to.

Q: Does PMSA question the validity of any of the charges incurred by PSP or in any way question the work product of any of the outside counsel to PSP?

A: No, and we would have absolutely no basis to do so. In fact, that is part of the problem. *See* MM-13 (PSP's response to UTC Staff DR 45-3-c). The issue isn't likely to be whether PSP is being overcharged or provided sub-standard service or advice by any of the firms that it employs as outside counsel. It is the shear breadth and depth of PSP's reliance on outside counsel. While many tasks can be performed competently by an attorney, are they tasks that are necessary for an attorney to be hired to do?

This question might be best illustrated with an example: If I were selling my house, I could choose to hire an amazing attorney with a very high hourly rate to handle all of the paperwork and the contract for closing my home sale and researching my title and handling my title insurance, and they could complete that job competently and effectively. But, I could likely also conduct the exact same tasks and achieve the same outcomes by hiring a realtor, a title company, and an escrow officer for a lower cost. The issue is the appropriate level of the expense for the purpose of regulatory accounting.

From a ratepayer perspective, the answer is obvious: book the lower cost. The question isn't whether PSP is overpaying for legal services because PMSA believes that the attorneys are overbilling PSP. Rather the issue is whether ratepayers are overpaying for expenses because PSP is hiring attorneys to do work that does not necessarily require an attorney in the first place. This is an area where it is nearly impossible for ratepayers to have visibility into. Monitoring and attending meetings where no legal business is necessary is one of the few externally facing tasks that raises that question, and that is why PMSA has noted this in both rate cases.

Q: Does PMSA have reason to believe that many costs categorized as "general legal" are related to UTC rate hearing preparation?

A: Yes. Because the pro forma breakdown (Exh. WTB-05, "Legal Exp") for "UTC-specific legal" only includes "Order 09," which refers to TP-190976, and "TOTE Litigation," which also refers to TP-190976, none of the Legal Expense breakdown for 2021 includes preparing the current general rate case, for which PSP had undoubtedly already incurred legal fees.

Q: What would lead one to consider the potential for TP-220513 related charges to be included in PSP's listing of "general legal" charges?

A: The overwhelming number of invoicing charges are to the firm used by PSP in its prior rate case, Williams, Kastner & Gibbs PLLC, but only two standout $50,000 billings were charged to UTC-specific legal. The firm of Leech Tishman Fuscaldo & Lampl is providing consulting and testimony in this case, but none of those charges was labeled UTC-specific legal. And, the firm of Haglund Kelley LLP is the lead counsel in this rate case for PSP, but none of its charges is labeled UTC-specific.

Q: What is PMSA's recommendation to the UTC with respect to "general legal" expenses in this tariff?

A: We would ask that only those charges which are truly essential "General legal" expenses be included in this category for inclusion in the tariff.

One way to gain the clarity needed to achieve this would be for the Commission to issue a bench request for a breakdown of legal expenses with respect to purpose, subject, whether they were for traditional legal services, and whether the legal expenses in 2021 were truly "general legal" in nature as opposed to preparations for this rate case.

d. UTC expenses.

Q: Does PMSA have positions on PSP's UTC expenses in the current rate proceeding?

A: Yes.

Q: Please provide your position on UTC cost amortization.

A: Regarding amortization of costs from the prior rate case, PMSA supports PSP's proposal for the continued amortization schedule for TP-190976 legal and consulting expenses that were incurred in the prior rate case. PMSA would also support the establishment of multi-year amortization schedules for legal and consulting expenses in the present rate case.

Q: Does PMSA support a supplemental filing by PSP to include the costs of the mediation regarding retirement issues undertaken between parties during the pendency of this case?

A: Yes, this is a valid and recoverable legal expense in response to the direction of Order 03, ¶ 14 in the present rate case that the parties attend a mediated "settlement conference." PMSA supports PSP's inclusion of the costs of the mediator for this mediated settlement conference at a future point in time through a supplemental filing.

Q: Are there legal and consulting costs in the current UTC rate case that PMSA believes should be excluded from recovery through the amortization of costs?

A: Yes, PMSA believes that the recovery of some of the legal and consulting costs from this case should be denied recovery. PSP has submitted legal and consulting arguments and testimony that are excessively repetitive of issues definitively dispensed with in the prior rate hearing, that should be excluded or are otherwise unhelpful to the decision of the Commission, that pertain to topics within the purview of the BPC and not to tariffs, or which otherwise are simply irrelevant to the disposition and decision in this rate case. Exhibit MM-15 lists testimony the costs for which should not be recoverable. The costs for the provision and creation of such testimony should not be passed along to ratepayers.

Q: Why is it important to limit the recovery of duplicative or irrelevant consulting and legal expenses?

A: The prior rate case before the Commission in TP-190976 was an exhaustive and comprehensive process that included a slew of PSP legal and consulting costs. It concluded with foundational conclusions of law that were not challenged by any party and that are now in the process of being implemented. As a result of the foundational aspect of the prior rate case, the Commission provided a seven-year amortization schedule for recovery of foundational PSP legal and consulting expenses.

PSP now submits a petition that seeks to both continue to collect from ratepayers the amortized costs of establishing the foundational conclusions that were reached in the prior case AND to collect from ratepayers costs to re-litigate the exact same foundational issues. Ratepayers should not be asked to pay for both. PSP should not be incentivized to re-litigate settled questions. If PSP wants to pay its own costs for such efforts and risk its own resources in the process, it may, but ratepayers should not have to contribute to costs PSP unilaterally decides to incur for the continued discussion of legal issues that have already been decided or for the presentation of materials and testimony irrelevant to pilotage tariffs.

e. Diversity, equity, and inclusion expenses.

Q: Did PSP include a pro forma adjustment for Diversity, Equity, and Inclusion ("DEI") expenses?

A: Yes, at Exhibit WTB-05, tab "DEI," with a proposed total DEI expense of $42,150.

Q: Does PMSA agree with this adjustment for DEI expenses?

A: PMSA partially agrees and partially disagrees.

Q: What adjustments are you recommending here?

A: PMSA agrees with including the "DEI Training Proposals" in PSP Expenses. Adding the retainer item and to facilitate training is a reasonable and necessary expense and is consistent with the priority that PSP, BPC, and industry are placing on DEI initiatives and training.

PMSA opposes including memberships and sponsorships (Exh. WTB-05, "DEI" tab, B:18-30) as PSP expenses. As acknowledged by PSP, these expenses are not usually allowed recovery in rates. Exh. WTB-04T 17:17-19. This is true regardless of the nature of the memberships or sponsorships. PMSA is not opposed to PSP or PSP's Members joining these organizations or participating in conferences. We also value participation in these groups, and PMSA is a member and leader in these and similar waterfront groups. PMSA leadership in this area includes my colleagues Ms. Jessica Alvarenga, PMSA Government Affairs Director, who is the first female person of color President of the Propellor Club at the Ports of Los Angeles and Long Beach, and Ms. Laura Williams, our Vice President of Operations, who is the first female person of color President of the Women in Logistics organization in Oakland. These are both very worthy organizations that PMSA supports. Pilots and their colleagues are welcome and regular participants. But we oppose recovery for PSP membership and sponsorships for these organizations in rates, including the Propellor Club in Seattle. As we appreciate that representation and pursuing these DEI values are important to PSP, we would expect that PSP will continue to pursue these memberships and sponsorships regardless of their status in this ratemaking.

Q: Does PMSA have anything else to add with respect to this expense?

A: Yes, in the recommendations at the end of my testimony below, I will propose additional DEI actions that should be taken by the BPC, rather than by PSP in this policy area. When the industry makes investments in improving the industry's diversity, equity, and inclusiveness, the money must go into durable and public program administration, not into additional pilot revenues or a private program at PSP. As such, we would prefer to invest these funds in a DEI initiative administered by the BPC.

f. Retirement payments to former executive director.

Q: What is PMSA's position on the payments to the former PSP Executive Director as an ongoing expense?

A: We are opposed to including this expense item in the tariff.

Q: Please describe the basis for PMSA's opposition to including this as an ongoing expense.

A: PSP created this unique liability for itself by offering its former Executive Director, an employee, the opportunity to be a participant in an employee version of the PSP retirement program. The PSP retirement program for pilots was established as a deferred compensation program for its non-employee, non-partner independent contractor pilot members only. PSP created this obligation for "retirement benefits comparable to those available to pilots" in an employment agreement, which is Exhibit MM-16, PSP Response to PMSA DR 224 at 7-8 (PSP 000629-000630).

In so doing, PSP created a retirement obligation for its former Executive Director that was earned during his time and service as an employee of PSP. But during that time PSP, as the employer, made no contributions to any fund to support this retirement obligation. Further, the Executive Director, as the employee, made no contributions to any fund to support this retirement obligation. And never during his employment with PSP was an IRS Form 5500 filed. Exh. MM-17 (Responses to PMSA DRs 224-229).

Q: As the Executive Director's employer, when should have PSP made contributions or set aside revenues for the service he was providing to PSP?

A: At the time that he was in the position and working. All compensation for the work completed by this employee should have been made during the term of his employment when it may have benefitted vessels and provided services to current pilots, including whatever payments and contributions should have been made to a retirement fund in order to pay for the future costs of the benefits that he earned while an employee. By contrast, a retired employee is, by definition, no longer providing any benefit or service to vessels, and his compensation should not be included in the current tariff as an "expense." If PSP did not previously provide these benefits for the prior Executive Director at the time of his employment, the payment for such a benefit now should come out of PSP's pocket. It must not be charged to current ratepayers.

Q: Did PSP also provide contributions to the Executive Director's other retirement options at the time of his service?

A: Yes, the Executive Director's employment agreement also provides that PSP would make payments to a 401(k)/Profit Sharing Plan and Cash Balance Plan through contributions deducted from his compensation. Exh. MM-16 at 7. This practice was also consistent with the compensation that the subsequent Executive Director received, a 401(k), and PSP paid payroll taxes to cover the social security obligations, per the 2018 PSP Financials.

Q: Is it typical to make retirement contributions at the time that they are earned?

A: Yes, to be creditable against a specific year of service the general rules for all sorts of retirement vehicles generally require some sort of payment within a specified amount of time for that payment to be credited for any single plan year. For example, the SEP-IRA rules require making payments for the tax year; the 401(k) rules require employers to make contribution deposits within a certain amount of time. And the requirement for employers with defined benefit plans is that "the due date for any payment of any minimum required contribution for any plan year shall be 8 ½ months after the close of the plan year." IRC § 430(j)(1).

Q: Is PMSA advocating for PSP to not pay the Executive Director their retirement obligation to him?

A: No, PSP should pay whomever they have an enforceable contractual obligation when it is due and owing, but that alone should not force a future ratepayer to pay for a retirement benefit to a former employee because PSP chose not to put aside the funds necessary when the obligations were incurred.

Q: Finally, did PMSA and PSP address this issue during the Commission ordered retirement workshops?

A: No, PSP declared an impasse and unilaterally concluded discussions with PMSA prior to addressing the Commission's requirement at ¶ 195 of Order 09:

> *195.* Finally, because we require the parties and stakeholders to engage in further discussions and bring forward proposed solutions at a later date, we decline to exclude from rates the $70,000 annual retirement payment for PSP's former executive director and instead direct the parties to address this issue during the required workshops.

g. Pilot license insurance premiums.

Q: What is PMSA's position on the premiums paid on pilot license protection and defense?

A: Aside from my suggestion to have pilots pay this through DNI, PMSA believes that this is largely a reasonable business expense for licensees to maintain. However, as described in Exhibit MM-10 (PSP Response to PMSA DR 457), we must object to one provision of this insurance policy as described. This particular policy is problematic because it charges a premium for coverage for "Criminal Acts Fines & Penalties - $300,000." Insurance cannot be used to indemnify an individual against criminal acts. See *Queen City Farms v. Central Nat'l Ins. Co.,* 64 Wn. App. 838, 862 n.15 (1992) ("It has long been against public policy to allow a person to purchase insurance for his immoral, criminal or fraudulent acts. 6B J. Appleman, *Insurance* § 4252 (1979)."). If PSP's individual pilot members would like to self-insure against potential fines or penalties resulting from a criminal act, they should pay that out of their own DNI. To clarify, PMSA is not opposed to the coverage for "Criminal Acts Defense - $1,500,000," rather only the premiums associated with payments of the actual fines and penalties imposed in the event that a pilot is convicted of criminal activity.

3. PSP's treatment of callback liabilities as an "expense" instead of deferred revenues is inconsistent with the commission order and needs correction.

Q: In the prior rate case what instructions did the Commission issue with respect to the future treatment of callback liabilities accrued by PSP?

A: The Commission directed that "actual working pilots" be compensated for callback assignments through the rates (¶ 240).

The Commission also determined that capturing accrued callback liability in the revenue requirement for a present year going forward would amount to an unjustified double payment for the same service (¶ 233), that there is no basis for an additional vessel charge based on a deferral of compensation (¶ 235), that PSP must defer revenue from callback assignments in the future (¶ 236), that vessel customers should not pay rates that support non-working pilots (¶ 238), and that these conditions exist because PSP distributes revenues collected from callbacks to pilots instead of setting such revenues aside for future distribution, which results in overstated revenues during the year of the callback assignment and creates a liability (¶ 232).

Q: How is PSP proposing to treat callback liabilities in its present rate case?

A: PSP is proposing to treat callback liabilities as an expense. (Exh. JJN-01T 3:1-15, Exh. JJN-02).

Q: Is this proposed treatment consistent with the Commission's Order?

A: No, this treatment is the opposite of what the Commission directed.

Q: Please describe these inconsistencies with each of these paragraphs of the Final Order in the prior rate case you have cited.

A: Regarding ¶ 233: The Commission Determination regarding callbacks found that "funding callback day 'burning' in the revenue requirement would amount to double payment" for "the same pilotage service," that if PSP proposes to increase the tariff "as a means to recover accrued callback liability, it proposes that vessels pay twice for pilotage services," and that "[d]irectly funding callback day 'burning'…unreasonably requires vessels to pay twice for pilotage services."

The PSP proposal to create a new callback expense category violates the Commission's express findings regarding double payment. The creation of a new expense category in the formula would require vessels to pay twice for callback liabilities, first when the vessel that actually hired the pilot paid for the service, and second by vessels subject to a new and higher rate in the future based on the inclusion of this new expense category. The method by which it attempts to externalize PSP's internal decision to defer compensation, whether through additional pilots or through a new expense category, does not change the fact that PSP is seeking to directly fund callback day burning through an additional vessel charge over and above the payment originally made by a vessel at the time the pilotage service was rendered.

Regarding ¶ 235: The Commission Determination regarding callbacks adopted the Staff's proposal based on the principle "that pilots receive adequate compensation for their work through a DNI distribution system that values all assignments equally, whether they are performed on watch or as callbacks," and that "there is no basis for an additional charge to the vessels merely because the pilot defers his or her compensation for that service until retirement."

The PSP proposal to create a new callback expense category is completely inconsistent with the Commission's conclusions regarding the equal valuation of all assignments. The creation of a new expense category in the formula would create an additional charge to offset the costs of the pilots' decision to defer compensation for a callback until some uncertain future time, potentially until retirement. The creation of a DNI level that compensates all pilots for all assignments means that there are no callback liabilities as a function of the tariff, rather they only exist by post-revenue decision by PSP and its members to defer the compensation earned by the pilots to some future payment date. As the Commission previously determined, this is not a proper basis for an additional vessel charge.

Regarding ¶ 236: The Commission ordered that "PSP must defer the revenue from a callback assignment in order to properly attribute the costs to the vessel that cause PSP to incur the expense at the time the expense was incurred."

Instead, it appears PSP completely disregarded this direction. The PSP proposal to create a new callback expense category seeks recapture from vessel payments in a future tariff and violates the Commission's direction to PSP to "defer the revenue from a callback assignment … at the time the [callback] expense was incurred." PSP here asks for the opposite precisely because, as described by its auditor, no revenues from callback assignments are being deferred by PSP. Rather, all these revenues are still being distributed to all pilots according to the PSP bylaws as if the Commission had never ordered any change. Exh. MM-18 (PMSA DR 163). Thus, PSP is opting not to "defer the revenue" necessary "in order to properly attribute the costs" of the callback "at the time" that the callback "was incurred." And, because no revenue deferral has been accrued to cover the expense, a liability results. Thus, this proposed expense is meant to create additional revenue to cover a liability that would not exist but for the lack of a deferral of revenue at the time the callback was created by PSP.

Regarding ¶ 238: The Commission concluded that a tariff should not be established which would create intergenerational inequities which compel a vessel "to pay pilotage rates that include non-working pilots who earned callback days from assignments that may have occurred years earlier." The Commission found that such a practice would be an improper result because it "requires vessels to subsidize PSP's decision to overdistribute revenue in earlier years."

The PSP proposal to create a new callback expense category is an express request for a subsidy to offset PSP's decisions to continue to overdistribute revenue to its members regardless of the Commission's admonition in the prior rate case. As noted above, in its financials, PSP has disclosed that it is continuing to choose to fully distribute its revenues as current year revenues and that it is not putting any revenues aside at the time the callback expense was incurred. Exh. MM-18 (PMSA DR 164). While the Commission's Order expressly accounted for, and avoided, the creation of intergenerational inequities, PSP's proposal to create a new expense category to pay for prior year callback liabilities would do bake such inequities into the formula for future tariff years.

Regarding ¶ 232: The Commission explained,

> First, PSP must recognize the effects of its decision to create a banked compensatory program by deferring income associated with callback assignments. To date, PSP has distributed the revenue collected from callback assignments to pilots without providing funding for pilots 'burning' callback days prior to retirement. This overstates revenues during the year of the callback assignment and creates a liability, which varies according to the time period in which the pilot uses their callback day to receive a share of distribution without accepting assignments.

The PSP proposal to create a new callback expense category does not recognize the effects of its decision to create a banked deferred compensation program. PSP has in fact not deferred income associated with callback assignments and has instead continued to distribute revenue collected from callback assignments without providing funding. PSP's proposal is to simply continue its past practice and to charge vessels more through an expense category. This continues to overstate revenues in the present year and creates liabilities for future vessels to pay through future expenses included in the revenue formula in future years.

Regarding ¶ 240: The Commission did not leave PSP in the lurch with respect to the revenues necessary to defer in connection with the creation of callbacks. "By providing a two-year rate plan for PSP to incrementally increase its revenue requirement," the Commission provided that "the actual working pilots are compensated for working callback assignments through higher rates." This necessarily creates a situation where vessels are charged based on the actual level of pilotage provided, and "vessels are not held responsible for the 'burning' of callback days and are not charged twice for pilotage services."

The PSP proposal to create a new callback expense category ignores that the Commission has already built an incremental increase into its rates specifically to compensate PSP for working callback assignments through higher rates. If the expense category for callbacks is approved, then PSP benefits twice: once when PSP enjoys the current higher rates that were established for callbacks and again in the future when PSP enjoys the payment by vessels into an expense category that only exists because PSP opted not to defer its revenues for future callback payments.

Q: How should the current rate case address PSP's callback assignments?

A: Consistent with the prior rate case, by building a tariff that covers total assignments, including both on duty assignments and callback assignments, in the determination of how many pilots are funded. In the prior rate case this resulted in the decision to fund 52 pilots at a projected total assignment level, inclusive of on duty assignments and callback assignments, at 143.4 assignments per pilot per year.

Q: Has PSP's testimony provided any clear rationale for why PSP is treating callback days as an "expense" instead of proceeding with deferred revenues as directed by the Commission?

A: No, the only description of this treatment of callbacks as an "expense" is in the testimony of Ms. Jessica Norris (at Exh. JJN-01T 3:1-15), which simply reproduces "Note 4" regarding "Funded Callback Days" from her 2021 PSP

Audited Financials with no additional explanation. With respect to the implementation of the Commission's Order, it makes no mention of a deferral of revenues. However, it states that "[a]s callback days are earned by pilots a liability is recorded and offsetting expense to the pilots. As callback days are used, the liability is reduced and expense to pilots is reduced." No other rationale for this accounting is included in the 2021 PSP Audited Financials or in the testimony of Ms. Norris.

Q: What was the size of the new "expense" of "Funded Callback Days" in 2021?

A: According to Note 4 of the 2021 PSP Financials (Exh. JJN-02), as of the end of 2021 there were 327 funded callback days, which Note 4 describes as funded at a rate of $1,198 per callback day worked. Further as part of the 2021 PSP Financials, according to the "Schedule of Seattle Office Operating Expense" (Exh. JJN-02, 29:2), the expense of "Callback days" created was $389,350, and likewise according to the "Statement of Assets, Liabilities, and Pilots' Equity" (Exh. JJN-02, 6:13), the current liabilities for "Callback day expense payable (See Note 4)" are $389,350.

Q: How should this liability of $389,350 be treated in the pilot financials?

A: As deferred revenue, as directed by the Commission under an accrual accounting methodology, or as a debit against pilot equity. As vessels arrive, they make payments on invoices for pilotage services rendered. After PSP receives the payment for a callback assignment, PSP should not increase its cash account. Instead it should credit the deferred revenue account and increase that account by the amount of the payment received by a vessel. Then, when a pilot "burns" a callback day, PSP should debit the deferred revenue account or pilot equity to show that the callback liability has been extinguished. This accrual is especially important when one considers that under its current bylaws PSP is distributing its cash net revenues in the year that they are earned. This simple accounting would exist independently of actual operating expenses. And no new expense item would need to be created.

Q: If PSP continues to treat callbacks as an "expense," what other adjustments would have to be made to ensure that future tariffs are developed consistent with the Order in the prior rate case?

A: If the Commission were to allow PSP to treat this as a recoverable "expense," then pilot TDNI would need to be reduced by an amount equal to the "expense" to avoid charging vessels twice for pilotage services and to undo the rate increase instituted by the Commission specifically to compensate pilots for these assignments through higher rates. PMSA would then recommend additional transparency regarding the proceeds from this "expense" category. Callback management should not only be subject to full accrual accounting as directed in the prior rate case Order, but PSP should also be required to report on its callback liabilities under a cash basis of accounting to ascertain whether PSP is actually setting aside the deferred revenue in cash in order to cover the cost of the liability when a pilot opts to "burn" his or her callback day in the future as a part of a payment against equity at the time of retirement or whether the cash proceeds are continuing to be distributed to pilots in the year it is earned.

V. PILOTAGE SERVICE RELIABILITY AND QUALITY HAS SUFFERED MATERIAL AND SIGNIFICANT DEGRADATION SINCE THE CONCLUSION OF THE PRIOR RATE CASE

A. Delays suffered by vessels in 2021-2022 have soared.

Q: Is pilotage service reliability and quality a concern of PMSA?

A: Yes, we need timely, reliable and high–quality pilotage services in order to conduct commerce competitively at Washington ports.

Q: Historically, have you felt that PSP took pride in the delivery of its services to its vessel customers?

A: Yes. While PMSA has regular disagreements with PSP over issues such as tariffs and the number of pilot licenses for the BPC to issue, we have not often had reason to worry about the reliability and quality of the service provided to vessel customers. PSP has historically had a good reputation for providing pilots who are willing and able to safely work vessels on time and as vessels' schedules change.

Q: In the prior rate case did PSP demonstrate its desire to continue to maintain its obligations under the regulatory compact and to do so by providing reliable and high-quality customer service?

A: Yes, as noted by the Commission at ¶ 199, PSP acknowledged and testified to the fact "that PSP is obligated to move ships on time and without delay when possible, stating that historically PSP's on-time vessel movement rate has been over 99.9 percent."

Q: Do you agree with Capt. Carlson's testimony in the prior case, as cited by the Commission at ¶ 199, that during 2018 and 2019 that PSP was not able "to meet PSP's previous on-time rate" of reliability of service at 99.9%?

A: Yes, at the time the issues of the quality and reliability of service by pilots were beginning to materialize and they were somewhat surprising given the traditional high quality and reliability of service provided by PSP. As described in Exhibit MM-19, while 2017 was a historically high reliability and high quality of service year, 2018 and 2019 were years where PSP's service was noticeably less reliable, as illustrated in the delay statistics for PSP for 2017–2020 here at Figure E:

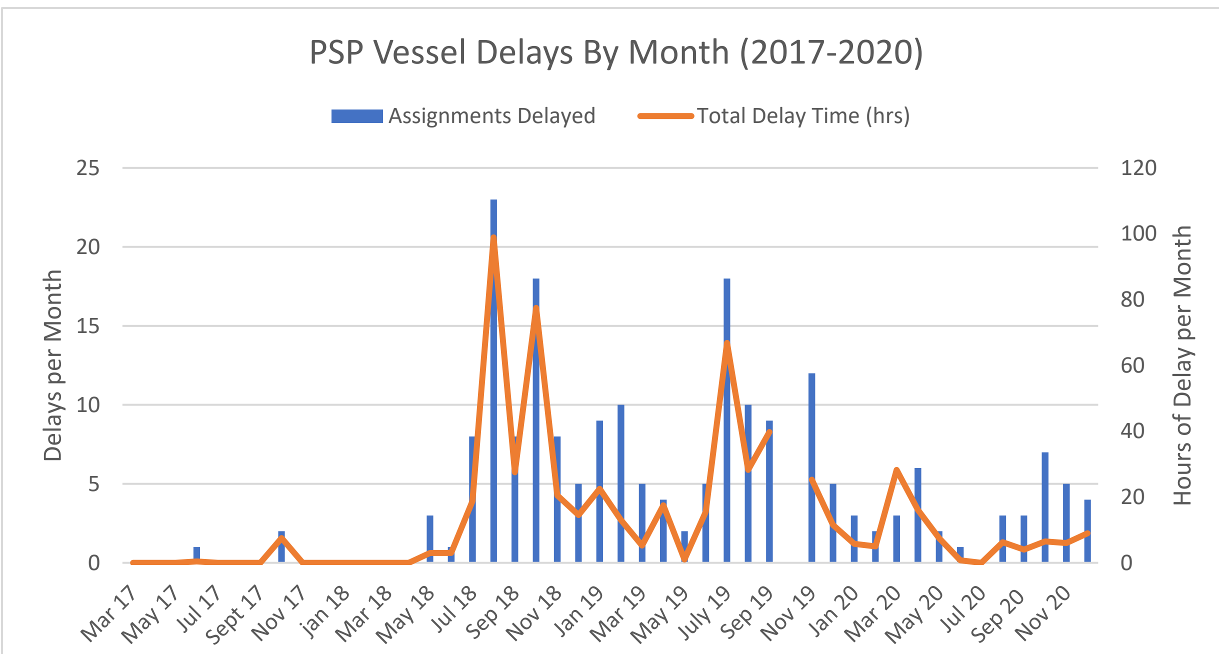


FIGURE E

Addressing the issues of callbacks and optimal staffing became necessary during this period of inefficiency. These concerns ultimately formed the basis for much of my testimony in the prior rate case and of PSP and UTC Staff.

Q: After the completion of the prior rate case, has PSP's management of its callbacks and delays returned to its previous high–quality service, or continued the elevated 2018-2019 levels of delays, or degraded further?

A: Unfortunately, the delay and reliability issues dramatically escalated in 2021 and 2022. As captured in Exhibit MM-19, the significant degradation of customer service makes the 2018 and 2019 issues PSP bemoaned at the prior hearing seem minimal by comparison. See Figure F here to illustrate this from 2017 to 2022:

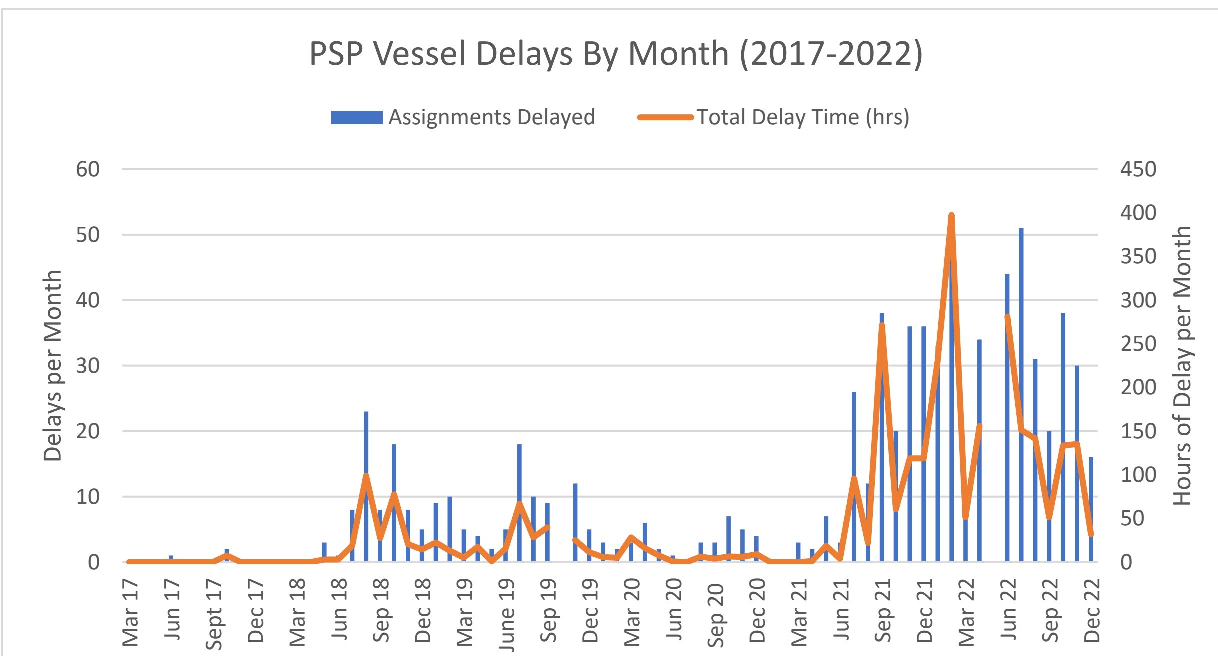


FIGURE F

Q: Can you please put these delays in historical context?

A: Yes, as is shown in Exhibit MM-19, and described in the following Figures G and H, in 2017 there were only 3 vessel delays total in that entire year, or a rate of 00.04% of all assignments. This is the 99.9% delay-free and reliable customer service that PSP had historically been committed to providing. During 2017 the average delay was also only 2.6 hours. During the 2017-2020 period, including the 2018 and 2019 period described as a particularly disruptive time for pilots and industry in the prior rate case, the average number of monthly delays climbed from 0.3 days per month in 2017 to 4.56 days per month for 2017-2020. The length of time associated with each delay also grew slightly to 3 hours.

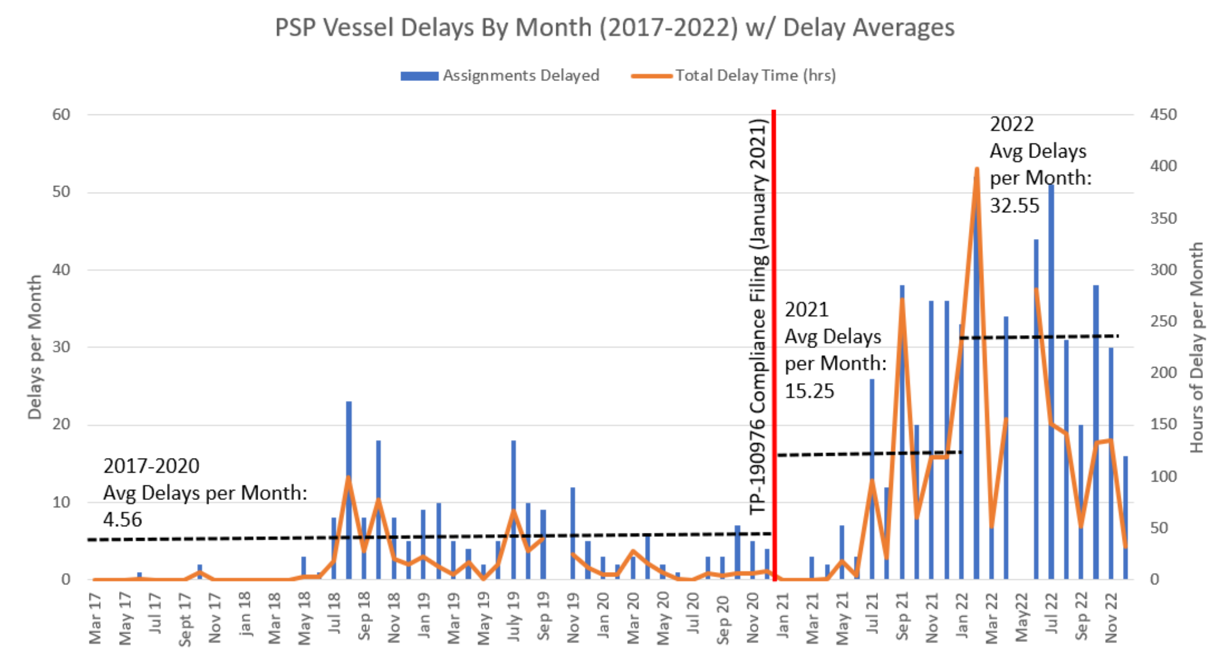


FIGURE G

But in 2021 and 2022, these numbers grew precipitously. The average delays per month climbed from the 4.56 in 2017-2020 to 15.25 delays per month in 2021 and then again to 32.55 delays per month in 2022. The delays were also longer, growing from an average duration of 2.6 hours per delay in 2017 to 4.9 hours per delay in 2022. In the span of a few short years, PSP has gone from having a stellar record of only 3 delays all year, to having an average of one delay every day and making that vessel wait for an additional 5 hours with a variety of negative ripple effects depending on the situation.

Q: Is this significant increase in delays in 2021 and 2022 occurring because there is too much work for pilots and not enough pilots to handle the assignments?

A: No. In fact, the workload factors PSP needed to meet were nearly identical to what UTC Staff predicted and the Commission adopted. As demonstrated by the summary provided in Exhibit MM-19, at Figure H here, these dramatic increases in delays cannot simply be explained by workload per pilot or the number of assignments.

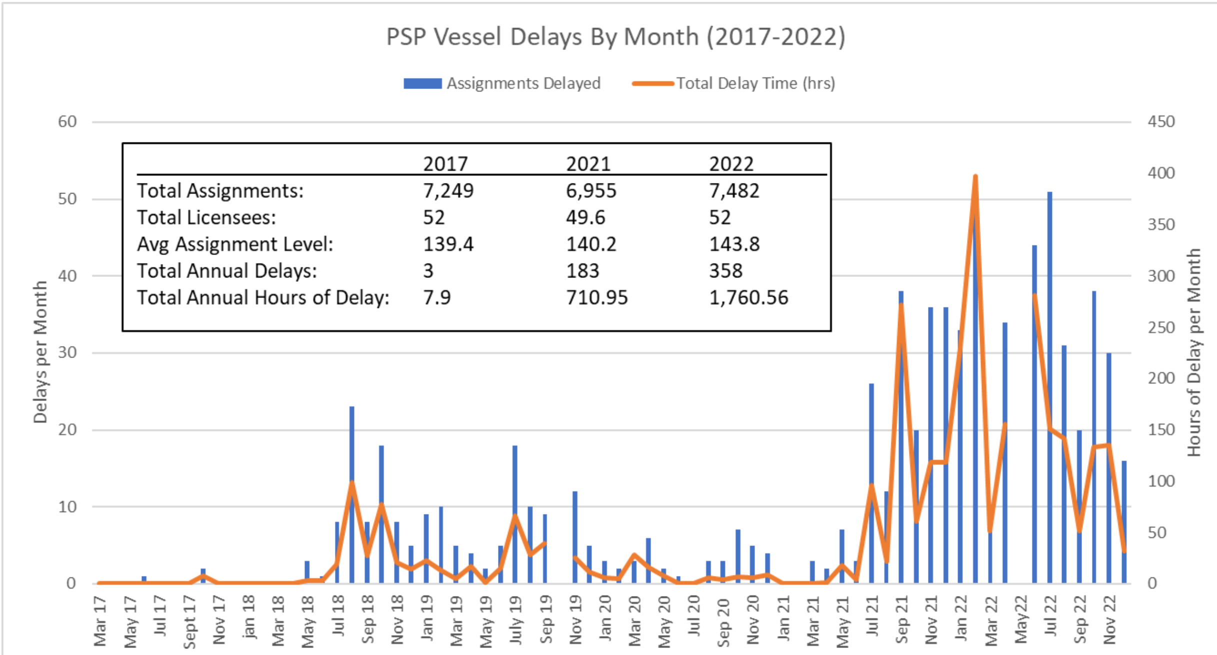


FIGURE H

The relevant metric for workload is the Average Assignment Level (AAL) per pilot. In 2017 and 2021 the AAL per pilot were functionally equivalent (139.4 versus 140.2), which is only a 0.8 difference , i.e., less than one pilot assignment per year. Yet the number of delays jumped by 180. Similarly, the AAL per pilot in 2022 was 143.8, nearly identical to the UTC Staff projection of 143.4, i.e. also off by less than a single pilot assignment per year.

Since the Staff assignment level was a prediction based on the prior 5–year average workload per pilot—a period that included years where service reliability was at 99.9%—this cannot explain away the significant degradation in service reliability either.

B. Delays are entirely preventable by PSP yet nonetheless occur when PSP does not make well-rested pilots available.

Q: Does PMSA agree with the Commission's description in the prior rate case of the "regulatory compact" that exemplifies the relationship whereby a regulated company possesses an obligation to provide fair services to those who request service and in exchange the Commission sets rates that represent an opportunity to recover their expenses and to earn a return, given wise and efficient management(Order 09, ¶ 36)?

A: Yes. PMSA agrees with all the conclusions of the Commission in the prior rate case regarding the "regulatory compact" and the obligation of the pilot monopoly to provide services to vessels upon request.

Q: What in your opinion is the best explanation for why PSP's service quality and reliability have degraded so dramatically?

A: From our analysis of pilot data comparing 2019 and 2021, the short answer is that PSP does not appear to be managing pilot availability well. Under their rotation, fewer than half of the pilots are on duty and available for assignments each day. Pilots find themselves with entire months of free time away from the water on multiple occasions during the year. On peak days, this leads to callbacks or delays, or both, eroding the ability to provide reliable service.

Q: Please describe why PMSA believes that PSP is substituting delays for callback days.

A: Delays are not a function of the number of pilotage assets made available to PSP, but rather effective management of their pilotage assets. Without schedule management, when pilots make themselves less available to move ships, then ship delays increase, but when pilots make themselves more available to move ships, then fewer ships are delayed. We can see this in comparing data for 2019 and 2021, for which we have access to BPC data on the number of pilots and assignments plus callback data from the prior UTC rate case. The number of assignments and total number of pilots are very similar. But the delays and callback numbers are very dissimilar:

	2019	**2021**
Number of Working Pilots	49.5	49.6
Total PSP Assignments	6,993	6,955
Average Assignment Level	141.3	140.2
Delays	89	183
Callbacks	1,098	893

As this simple chart describes, in 2019 and in 2021 we had essentially the same number of pilots doing the same amount of work and at the same average amount of work done per pilot. But by doing 200 fewer callbacks, PSP also created 100 more vessel delays.

Q: How could PSP have avoided these delays through better management in 2021?

A: If PSP had scheduled the 49.6 working pilots at the Commission-adopted AAL per pilot of 143.4 in 2021, then that alone would have prevented 158 vessel delays. The actual AAL in 2021 was 140.2, so each pilot could have added just 3.2 days to their workload for the year to complete 143.4 assignments. With an AAL of 140 days, that leaves 225 days free days that year that a pilot was not working a vessel assignment. With each pilot averaging 225 days off per year, we do not find claims of a pilot shortage compelling. PSP could have managed to produce an additional 3.2 jobs on average per pilot per year to alleviate customer delays. Then the 183 delays would be reduced to just 25 for the year, i.e., two per month, or 99.65% reliability on 6,955 assignments.

Q: Is there capacity in the PSP watch schedule for more duty days to be scheduled on-duty?

A: Yes, PSP's new watch schedule adopted in 2022 has not improved the delays issue, perhaps in part because it only schedules pilots for duty an average of 177.65 days per year. Exh. MM-20. This is 4.85 average duty days short of the traditional half-on/half-off watch rotation claimed by PSP, which if fully implemented would average 182.5 days per pilot per year. Adding 5 extra days to a pilot's schedule would be just one more day of duty every other month. This additional single day every other month, with 55 pilots, would yield an additional 267 duty days to address delay issues and reduce use of pilot callbacks.

PSP often states its pilots stand a 15 days on / 13 days off watch. If that were true, without large blocks of vacation time, pilots would average 195 duty days per pilot per year. Instead, they are missing almost 18 duty days per pilot in their schedule becausethe earned time–off blocks are very generous: almost every pilot gets almost an uninterrupted full month off from duty twice each year in addition to all the 13–day respite periods in between these extended times off watch. For example, in 2022, the pilot standing duty in Watch 1, Group 1 went off-duty on April 13 and resumed duty on May 12, and then that same pilot went off-duty on September 16 and resumed duty on October 13. When pilots reduce on-duty time like this, it makes the need for callbacks more acute, and if pilots are attempting to reduce their off-duty workload by reducing callbacks, this combination of factors necessarily leads to more delays.

Q: Does PSP effectively use the 177 days that it does actually schedule pilots to be on duty?

A: No, because they overschedule the change days for pilots. This creates overstaffed days and understaffed days with no relationship to actual demand for pilotage. Thus PSP essentially guarantees that pilots will be "on-duty" but less likely to have an assignment during the overstaffed days. PSP plans this into its schedule well in advance, as shown in the recent PSP schedule (Exhibit MM-21). This PSP scheduling spreadsheet shows 34 days in a year with an average of nearly 35 pilots on duty on each of those days. The overstaffing on some days while understaffing on others contributes to delays and callbacks.

Q: Will changing the duty schedule alone solve the problem of delays?

A: Not necessarily. More important than the number of days that pilots stand on duty is the number of days that pilots are available to provide piloting services. This is the more relevant factor because of the high amount of vacation and comp time, plus the inconsistency of the scheduling calendar having more pilots on duty on change days. As a result of these factors, the actual number of pilots on duty does not track with the number of pilots one might expect to be on duty in a straight rotation. So, in addition to the duty calendar it is important to see how often pilots are actually making themselves available to work and when.

Q: Has PMSA attempted to analyze this question by looking at PSP workload data?

A: Yes. The 2021 workload data provided by PSP in this case and the 2019 workload data provided by PSP in the prior case at TP-190976 Exhibit IC-40x indicate that in 2021 pilots have made themselves less available to pilot—both on-duty and off-duty.

The 2021 workload data shows that the average active pilot did 116 on-duty jobs and 17 callback jobs, for a total of 133 assignments per year. This is described in Figure I (Exh. MM-22).

		Assignments	CDT (Comp Days Taken)	On Duty Jobs	Comp Time Jobs (Callbacks)
2021 TOTALS w/ inactive	55	6947	1143	6054	893
AVERAGE per Pilot			20.78		
2021 ACTIVE* Pilot TOTALS	52	6947	730	6054	893
Average per ACTIVE Pilot		133.60	14.04	116.42	17.17
			Comp Days Taken vs. Callback Days Worked Per Active Pilot		
			Total Net Callbacks	163	
			Avg Net Callbacks per Pilot	3.13	
*ACTIVE Excludes Pilots with 0 JOB but using comp days (CDT)(A8CF, 83C3, 4F63)					

FIGURE I

The PSP dataset for 37 pilots in TP-190976 Exhibit IC-40x, showed that the average active pilot completed 125 on-duty jobs and 30 callback jobs, for a total average of 154 assignments in 2019. This is described in Figure J (see Exh. MM-23):

	Assignments	Comp Days Taken	On-Duty JOBS	Comp Time Jobs (Callbacks)
2019 TOTAL Pilots*	5713	439	4615	1098
AVERAGE per Pilot	154	12	125	30
Range: High	205	41	142	63
Range: Low	117	2	105	5
Median	155	9	127	29
Mode	144	6	131	22
*IC-40X, TP-190976, only provided data on 37 pilots			**Comp Days Taken vs. Callback Days Worked Per Active Pilot**	
			Total Net Callbacks	661
			Avg Net Callbacks per Pilot	18

FIGURE J

Comparing these two datasets, active pilots were working an average of 9 more days per year while on-duty in 2019 than in 2021.

Q: Does this analysis demonstrate that PSP could cover vessel delays with their existing pilotage resources?

A: Yes, because not only has the number of pilots increased from 2019 to 2021, but if each pilot had remained as productive in 2021 as in 2019, PSP would have had many more additional on-duty pilots available to avoid delays.

Q: What does this analysis say about PSP's ability to make additional pilots available to pilot while off-duty and to avoid delays in 2021?

A: Pilots are averaging just over 3 days per year of net callbacks, which means that in 2021, each pilot was averaging working 17 days off-duty (a "callback"), but then taking off of work an average of 14 comp days while on-duty. This is a net additional workload of 3 extra days. All told, including callbacks, the average pilot was working a total number of 133.6 assignments in 2021. In 2019, by comparison, the net callback days worked was 18 extra days. By this measure, in 2021 pilots essentially took 15 more days off than in 2019.

Q: How many assignments in 2021 did BPC data show that pilots can and did safely complete?

A: BPC-provided data analyzing pilot assignment levels for 2021 included a breakdown of assignments completed per pilot per month for that year (Exh. MM-24), as well as assignments completed per day (Exh. MM-25). This BPC data showed that pilots can and did routinely and safely complete over 170 jobs in 2021, without any reported fatigue or safety issues. See Figure K.

Puget Sound Pilots 2021
Assignments per Pilot per Month

	2021-01	2021-02	2021-03	2021-04	2021-05	2021-06	2021-07	2021-08	2021-09	2021-10	2021-11	2021-12	Avg	Total
	12	15	21	12									15.00	60
	9	13	14	13	13	8	20	17	17	19	11	21	14.58	175
	12	9	15	16	12	17	18	18	21	9	14	12	14.42	173
	6	16	13	12	15	15	23	20	15	15	8	13	14.25	171
	12	8	12	12	13	16	14	15	18	21	10	17	14.00	168
	13	11	12	13	15	14	16	21	10	11	16	14	13.83	166
	15	9	10	14	13	14	17	18	13	17	15	10	13.75	165
	14	4	12	17	15	18	13	18	16	12	17	7	13.58	163
	11	14	6	12	12	14	20	13	19	11	12	14	13.17	158
	11	15	14	18	6	13	13	14	18	9	13		13.09	144
	10	14	14	14	9	14	17	9	12	20	9	14	13.00	156
											7	19	13.00	26
	14	12	4	14	13	14	19	9	17	18	10	7	12.58	151
	17	12	10	14	6	13	17	12	10	16	13	11	12.58	151
	11	12	13	10	15	16	9	16	13	13	11	12	12.58	151
	3	13	12	14	15	7	16	16	17	18	7	13	12.58	151
	11	10	15	11	11	12	11	14	15	15	12	14	12.58	151
	10	0	12	17	11	14	6	21	14	20	15	11	12.58	151
	12	9	11	6	15	13	16	13	13	11	17	15	12.58	151
	9	10	12	9	11	11	12	17	11	17	15	16	12.50	150
	NFFD	NFFD	NFFD	6	15	15	21	9	15	9	12	9	12.33	111
	12	15	15	3	16	15	16	6					12.25	98
	10	16	15	12	6	13	16	17	12	4	11	15	12.25	147
									2	16	15	16	12.25	49
		11	13	10	11	12	17	8	13	14	12	13	12.18	134
	11	11	16	3	10	17	18	11	7	15	14	13	12.17	146
	10	11	7	15	7	15	8	14	18	10	16	14	12.08	145
	10	11	12	8	13	7	22	14	15	10	10	13	12.08	145
	12	13	4	12	15	13	12	3	16	11	15	18	12.00	144
	9	13	10	14	12	18	15	11	7	15	8	10	11.83	142
	12	9	15	14	9	13	16	6	14	12	12	9	11.75	141
	4	9	13	15	13	8	17	12	14	19	7	10	11.75	141
	5	9	15	10	6	13	20	12	15	7	14	14	11.67	140
	4	9	10	9	12	6	16	17	17	16	11	13	11.67	140
	12	14	12	3	13	13	14	20	2	10	14	12	11.58	139
	17	11	14	5	15	11	14	8	4	15	9	16	11.58	139
	11	12	11	9	15	10	12	16	11	13	11	7	11.50	138
	4	12	13	8	14	5	16	15	18	14	6	12	11.42	137
	12	1	11	11	15	14	5	17	17	13	16	5	11.42	137
	11	7	10	10	11	15	10	15	12	12	11	13	11.42	137
	13	11	11	12	6	10	18	8	11	9	15	12	11.33	136
	7	0	15	14	14	14	11	11	12	20	11	7	11.33	136
	11	12	12	10	10	10	15	13	10	12	6	NFFD	11.00	121
	14	10	9	11	14	13	12	10	13	10	10	6	11.00	132
	11	6	13	9	10	9	12	15	9	18	8	10	10.83	130
	9	9	9	12	9	15	15	14	2	12	11	12	10.75	129
	9	9	2	12	14	13	17	2	12	13	10	8	10.08	121
	10	5	11	5	15	14	12	10	12	11	9	5	9.92	119
	4	11	12	12	11	7	8	8	13	12	8	8	9.50	114
	12	6	8	7	6	11	12	11	11	6	12	3	8.75	105
	9	7	8	5	11	8	10	8	10	9	9	9	8.58	103
	13	9	3										8.33	25
Total Assigns	500	495	561	534	568	600	704	622	613	639	565	552		6953
Available Licensed Pilots not including president & NFFD	48	49	49	49	48	48	48	48	48	48	49	47		
Assigns per Available Pilot	10.42	10.10	11.45	10.90	11.83	12.50	14.67	12.96	12.77	13.31	11.53	11.74		

= 12 or more
= 6 to 11
= less than 6

"NFFD" is only indicated if pilot was NFFD their entire watch

FIGURE K

Q: What does this chart tell us about pilot workloads and callbacks?

A: While this BPC-created chart does not break down on-duty versus off-duty pilot jobs, the cumulative totals show that none of these pilots, even those with the highest total assignment levels, exceeded an average assignment level of greater than 15 days per month. In other words, none of the pilots on average had a workload of greater than the number of days that they had on-duty under a 15-day "on"/13-day "off" rotation. This is significant, because it confirms that callbacks in 2021 were not a function of pilots working "overtime" or beyond their total scheduled days that they should have expected to work. Instead, callbacks were a tool used to deal with fluctuations in pilot availability and vessel traffic. These same conclusions could be drawn with respect to vessel delays: total pilot capacity was more than sufficient and thus not the issue; rather, it was PSP's workload mismanagement that was the real source of delays.

Q: What is the bottom line take-away in your opinion from all these datasets that demonstrate pilot capacity to meet pilot demand without delays?

A: The actual 2021 AAL per pilot of 133.6, compared against the Commission's AAL of 143.4, shows each pilot on average worked 10 fewer assignments per year than the level on which the Commission based the current tariff. For purposes of avoiding delays, this just confirms that the issue is not the availability of total pilot assets. There are more than enough licensees to move the number of vessels that need pilotage services. Rather, the delays result from pilots making themselves less available.

Q: Do you agree with the Commission's assessment (Order 09 at ¶ 198) of PSP's testimony in the prior case that "PSP is staffed to average demand levels rather than peak demand levels, which requires the use of callback days to provide the necessary pilot capacity during peak demand periods"?

A: Partially. PSP in fact has more than enough pilots available to staff even the busiest of peak days during the height of cruise season. PSP just chooses to organize itself so pilots don't work most days out of the year. This is a resource management issue. PSP does suffer not from a shortage of licensees rather from a lack of schedule optimization and scheduling discipline in addition to management decisions regarding pilot availability.

Q: How can schedule optimization improve customer service and reduce delays?

A: The numbers in aggregate demonstrate that pilots have capacity to avoid delays if they handled their dispatching policies more effectively and strategically. If PSP simply scheduled a handful of additional jobs per pilot per year most delays evaporate and most callbacks would be rendered unnecessary. PSP would then have the personnel necessary to "staff to peak" instead of "to average." But we agree with the Commission's observation that, so long as PSP keeps operating with the staffing, watchstanding and management of pilot availability models it has in place, then the main tool for handling surges in volumes and demands to move ships on time will continue to be callbacks.

Q: On the basis of this evaluation, what is your conclusion regarding the ultimate impacts of these delays and service degradation to pilot customers?

A: It looks to PMSA like the pilots are externalizing the costs of their callback system to their customers through service delays and lower quality performance. In the prior rate case, PSP asserted that if they were paid more for their services that, even with the same number of licensees, they could reduce callbacks. Now, they seem to be doing the opposite: with the same number of licensees, they have increased delays. The Commission and UTC Staff rightfully pushed back and disagreed with the premise that they needed to "buy" callback management from PSP. Instead the Commission set up a funding formula based on compensating pilots for all of their assignments, both on-duty and off-duty, through an Average Assignment Level based on the pilots' own historical productivity levels. Those productivity levels were based on a history of providing a highly reliable service. Now they are being paid on the basis of a high productivity level while providing a less reliable service in return.

Q: Why does this decision "externalize" the costs of not working?

A: Because PSP makes the same amount of revenue from a vessel that is delayed by an untimely and unreliable pilotage service as from timely pilotage service. On the ratepayer side, the costs to the delayed vessel can be substantial, while on the PSP side, each pilot who would have been working these jobs is getting paid the same but also now getting at least an extra three days off every year. Delays cost vessels in terms of fuel, wharfage, berthing fees, anchorage charges, crew costs, risk of cargo spoilation in many instances, and of course the value of the lost time itself.

Q: How does this damage the pilotage system and why is this service degradation relevant to this rate case?

A: The lack of the provision of timely and reliable service by a monopoly granted a guaranteed rate by the State is a violation of the regulatory compact. Our vessels have no other service provider that competes with PSP. This leaves us with no market-based way to ensure higher levels of quality service and reliability. To counter this degradation of service, the answer is **not** to raise the rates of the customers who are already paying for the decreased quality and reliability of service. Rather, it is all the more imperative that the Commission stay the course, maintain its commitment to establishing an Average Assignment Level based on the prior rate case that incorporates and compensates all assignments, whether on-duty or off-duty, which in turn will create powerful efficiency and productivity incentives for PSP over time. If there is no way to leverage additional charges for off-duty assignments, then PSP should logically be motivated to improve and optimize watch standing approaches and management.

VI. MATERIAL PILOTAGE CONDITIONS HAVE REMAINED SUBSTANTIALLY UNCHANGED SINCE THE PRIOR RATE CASE

A. Puget Sound continues to attract and retain pilots under the current tariff.

1. The 2021 BPC pilot exam saw a robust number of applicants exceeding historical averages and a typical number of candidates passed the 2021 exam.

Q: Does PMSA agree with the Commission's conclusion (Order 09 ¶ 152) in the prior rate case that "PSP's historical compensation levels have not discouraged candidates from seeking to enter the training program"?

A: Yes. PMSA agrees with all the conclusions in the prior rate case regarding the ability of the Puget Sound to attract and retain pilots. The Commission concluded that PSP was not suffering from an inability to attract qualified potential candidate pilots. The Commission further stated that "PSP's compensation levels easily attract qualified candidates" (¶ 153) and there was "no evidence to suggest that PSP's historical compensation levels have attracted less capable candidates than would otherwise be available." (¶ 154).

Q: Does PMSA agree with the Commission's conclusion that, even though PSP failed to meet its "burden of demonstrating that compensation levels are impacting its ability to attract and retain pilots" in the prior rate case, "PSP's failure to meet its evidentiary

burden in [that] case in no way precludes the Commission from considering these factors in subsequent general rate proceedings"?

A: Yes, absolutely, the Commission should be reviewing these same factors and evidence again now.

Q: In this rate case should the Commission note the historical fact that PSP has had no issue attracting candidates regardless of the existing and reported compensation levels, just as the Commission did in the prior rate case?

A: Yes.

Q: In reviewing these factors should the Commission consider the pilots' compensation levels and demand for trainee positions when comparing 2019 candidate examination to the 2021 candidate examination?

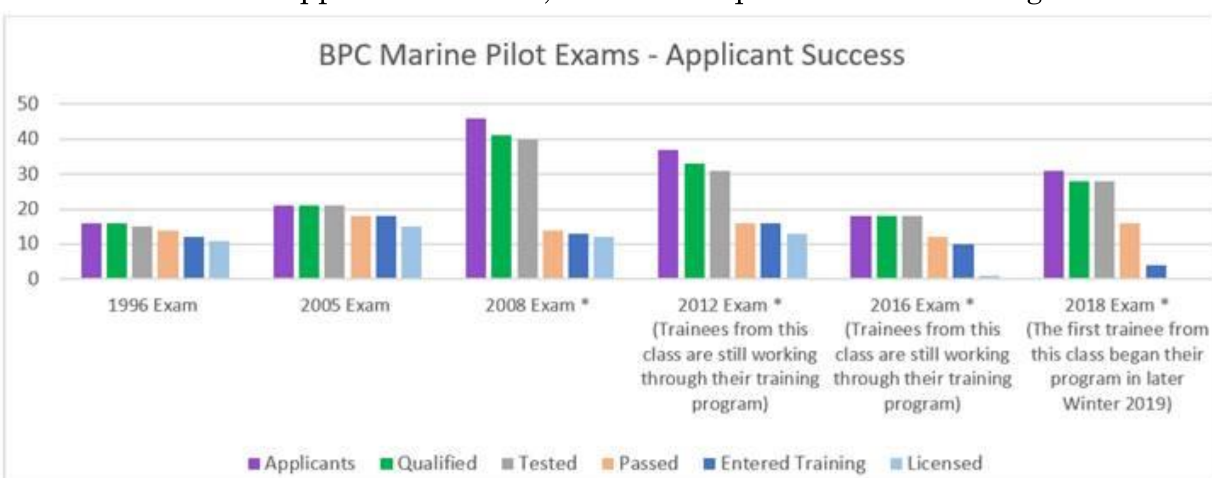
A: Absolutely. The last two distributed net income numbers per pilot prior to the 2021 exam were $204,581 per pilot in 2020 and $369,647 per pilot in 2019. There were 40 applicants to take the 2021 exam, the second highest number since 1996, as discussed in my testimony below. This confirms that the Puget Sound continues to attract qualified candidates independent of rate changes.

Q: Why is the Puget Sound an attractive pilotage ground for applicants?

A: As I described in my testimony in the prior rate case (at TP-190976 Exh. MM-1Tr, Section VI) the Puget Sound has been a very attractive pilotage ground for prospective trainees generally. The Puget Sound draws from a large pool of local and experienced mariners. The pilot applicant pool and trainee list in recent years has been very robust and produces more than an adequate number of pilot trainees. There has never been a pilot opening in the Puget Sound without a BPC–qualified candidate in training or waiting to train. This is important for analyzing evidence because it sets a factual baseline to judge pilot attraction and retention here.

Q: What was the historical baseline established in your prior testimony?

A: I cited numerous sources in that testimony, but I think the best graphical representation of the history of the ability of the Puget Sound to attract applicants to its training program was the illustration from the BPC 2018 Annual Report (Fig. FF, TP-1900976 Exh. MM-1Tr) entitled “BPC Marine Pilot Exams – Applicant Success,” which is reproduced here as Figure L:



* Note: A Federal Pilotage Endorsement for the area was no longer required for exam qualification beginning with the 2008 Exam

FIGURE L

Particularly relevant in viewing these application numbers over time is the fact that the 2016 and 2018 exams reflect a time when pilotage rates were held constant.

Q: What conclusions did you draw from this?

A: The size of a class of applicants is not directly correlated with pilotage rates.

Q: Do you maintain that opinion in view of the tariff change that became effective in January 2021?

A: Yes.

Q: Why?

A: Because the new BPC pilot exam on April 5, 2021, produced a very large group of new applications—the second largest group since 1996.

Q: What were the applicant and qualification numbers from that exam?

A: As summarized in the 2021 BPC Annual Report (Exh. JR-6), at pages 19-20: of 40 applicants, 37 qualified to take the exam, 22 passed the written exam, 11 passed both the written and the simulator exam portions, and as of August 31, 2022, 5 candidates from the 2021 exam list had started training in Puget Sound and 2 in Grays Harbor.

Q: How does the size of this class of applicants from the 2021 pilot exam compare to the historical exam sizes?

A: 2021 saw the second largest number of applications of any pilot exam since 1996 and most closely replicated the exam demographics of 2008. Compared to the two most recent previous exams, which were both held under the same previous tariff, the 2021 applicant pool was 25% larger than 2018 (which had 30 applicants) and more than 100% larger than 2016 (which had fewer than 20 applicants).

Q: How does the size of the class of candidates that passed the pilot exam in 2021 compare to historical size of classes that passed the pilot exam?

A: Historically, each exam has generated a number of qualified candidates that passed both the exam and simulator in the range between 11-16, seemingly independent of the number of applications received. 2021 was no different. It resembled 2008, which had the highest number of applications ever but still generated a standard number of pilot candidates after the exam. The final candidate pool was smaller than in 2018 but similar to 2016. This suggests little correlation between the number of applicants and the number of pilots that make it to the training program. The number of trainees produced by these exams remains very stable.

Q: Did the BPC 2021 Annual Report update the chart to show how the 2021 Pilot Exam compares to the historic numbers graphically?

A: No, but I have updated it, as shown in Exhibit MM-26 and Figure M below.

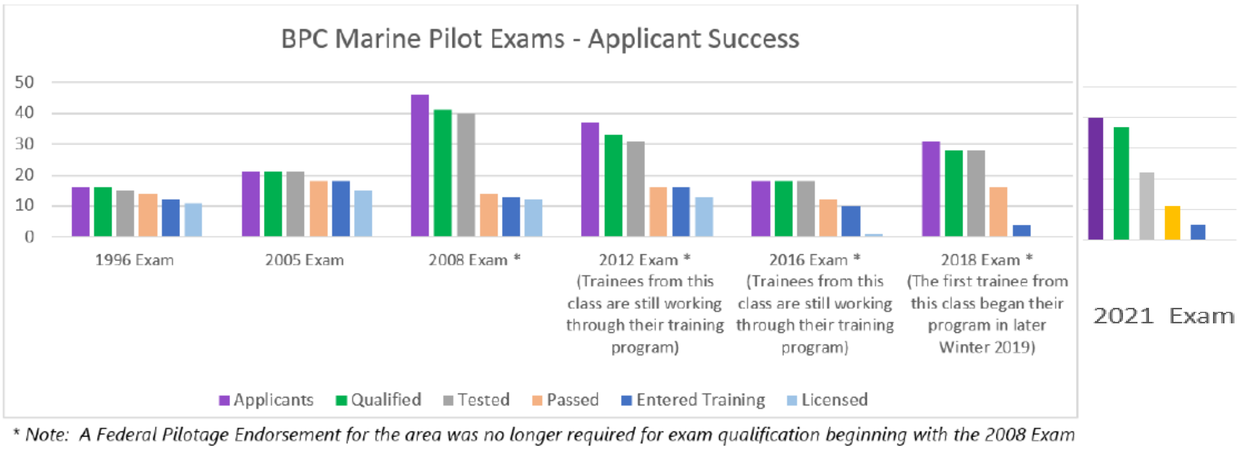


FIGURE M

Q: Does the short-term trend of 2016, 2018 and 2021, indicate anything else about the attractiveness of Puget Sound for pilot applicants?

A: If anything, the Puget Sound pilotage ground is becoming more attractive to candidates, not less. The number of total applications and total qualified applicants are increasing:

2016:19 total applications; 18 qualified

2018: 31 total applications; 28 qualified

2021: 40 applications; 37 qualified

This shows continual growth in the number of applicants meeting or exceeding the qualification standards who are choosing the Puget Sound.

Q: Noting that you do not believe that there is a correlation between rate changes and the number of applications, nonetheless, if one were to try and draw such a correlation just based on the data between 2018 and 2021, what would you conclude regarding the attractiveness of the Puget Sound after the 2020 tariff decision in the prior rate case?

A: The evidence suggests the 2020 tariff decision made Puget Sound even more attractive to potential pilot trainees because 25% more of them submitted applications in 2021 than in 2018.

Q: Why do you consider applications, qualified applications, and the number ultimately licensed in your analysis?

A: These metrics show candidate pool size, interest level and qualifications. Only if all these factors decreased to the point where no highly qualified candidates were waiting to train or in training for an open pilot license spot would there be a problem. That is clearly not the case.

Q: Has this happened historically or recently in the Puget Sound?

A: No, the applicant pool historically, and in the 2021 exam, is made up of highly qualified mariners who are serious about applying to be Puget Sound pilots. We know this because very few applications are rejected as being from unqualified individuals. Again, 2021 resembled 2008, and as one might expect, the year with the highest number of applicants also had the highest number of applications deemed unqualified. But even with these few applicants being disqualified, 2021 was the year with the second highest number of qualified test takers sitting for an exam in the past quarter century. This is definitive proof that Puget Sound remains an attractive place where highly qualified mariners want to be a pilot.

Q: How do you know there are enough highly qualified candidates in the training pool?

A: The real issue is whether you can provide enough highly qualified candidates to successfully complete the training program and be licensed. If you never have an opening where you do not have a highly qualified candidate on an approved list waiting to train or a trainee already in training, then you do not have an attraction or supply problem. The key is for BPC to make timely decisions on when to hold exams and when to start trainees to ensure openings are filled in a timely fashion. Historically and currently, the BPC has done an excellent job at holding timely exams and getting trainees up and running in the training program. Any lag in licensing to fill openings is not due to a lack of highly qualified, screened candidates on a waiting list or in training.

Q: Does BPC's exam timing or the amount of time it takes a trainee to complete the training program have anything to do with the tariff or rates?

A: No.

Q: Do trainees have a natural incentive to try and get their training completed in a timely fashion?

A: Yes, because they have already demonstrated a great desire to become a licensed pilot for a variety of reasons. Being licensed allows them begin this phase of their career and transition from a training stipend to pilot compensation. The training stipend is in no way comparable to either their future compensation as a pilot or to the average compensation of jobs that make up the pilot candidate pool. So there is a natural incentive for a trainee to become a fully-licensed pilot as soon as possible.

Q: Considering the stipend of a trainee, what does that say about attractiveness to a pilot candidate?

A: The fact that pilot candidates are willing to take a significant pay cut mid-career, often when they have families and mortgages and all of the obligations that you would assume for someone at that stage in life, and leave their prior job to take the opportunity to train 18 months or more to become a licensed pilot while receiving a relatively small stipend during training is just further proof that this job is tremendously attractive. PMSA applauds and recognizes this sacrifice by trainees. It is in everyone's best interest—industry, the BPC and PSP—to have pilot candidates that are dedicated to this training, to this pilotage ground, and to a career as a pilot.

Q: Does the testimony of PSP address the issue of the costs of a mid-career change?

A: Only partially. Though PSP's actuary, Mr. Christopher Wood, discusses the reduction in long-term retirement benefits that is a result of a mid-career change, his testimony does not address the question of the reduced current pay of a pilot trainee under the stipend or the impact of the PSP required "buy in." Exh. CRW-01T 6:8-7:9.

Q: What is the thrust of his testimony?

A: Mr. Wood describes how a theoretical employee can be worse off financially under a mid-career change. His specific theoretical is that "[a]ssuming identical defined-benefit pension plans based on the same final average earnings formula, a worker who makes a midcareer move at the end of year 20 from one employer and then works for another 20 years for a new employer with the same pension plan will end up with two pensions (assuming the vesting period is no longer than 20 years) which, added together, will generate a substantially lower combined pension benefit than a worker who devoted a 40-yeur career to an employer with an identical defined benefit pension plan." Exh. CRW-01T 6:8-6:19.

Q: Do you agree or disagree with this testimony?

A: Both. I agree with Mr. Wood that this is the correct theoretical outcome if you ignore changes in compensation between the two jobs. But because you cannot ignore changes in compensation between the jobs, I disagree that this applies to PSP.

Q: Does Mr. Wood attempt to offer a theoretical demonstration of the claim in his testimony?

A: No.

Q: Can you demonstrate why Mr. Wood's evaluation is incorrect when applied to the mid-career move of a mariner from Master to Puget Sound Pilot?

A: Yes, I have put together a high–level theoretical comparison of what a mid-career move would look like for a master earning $200,000 a year who transitions into a PSP position earning a theoretical DNI of $400,000 a year. Exh. MM-27. Figure N compares the scale and scope of the lifetime earnings of a Master and Puget Sound Pilot.

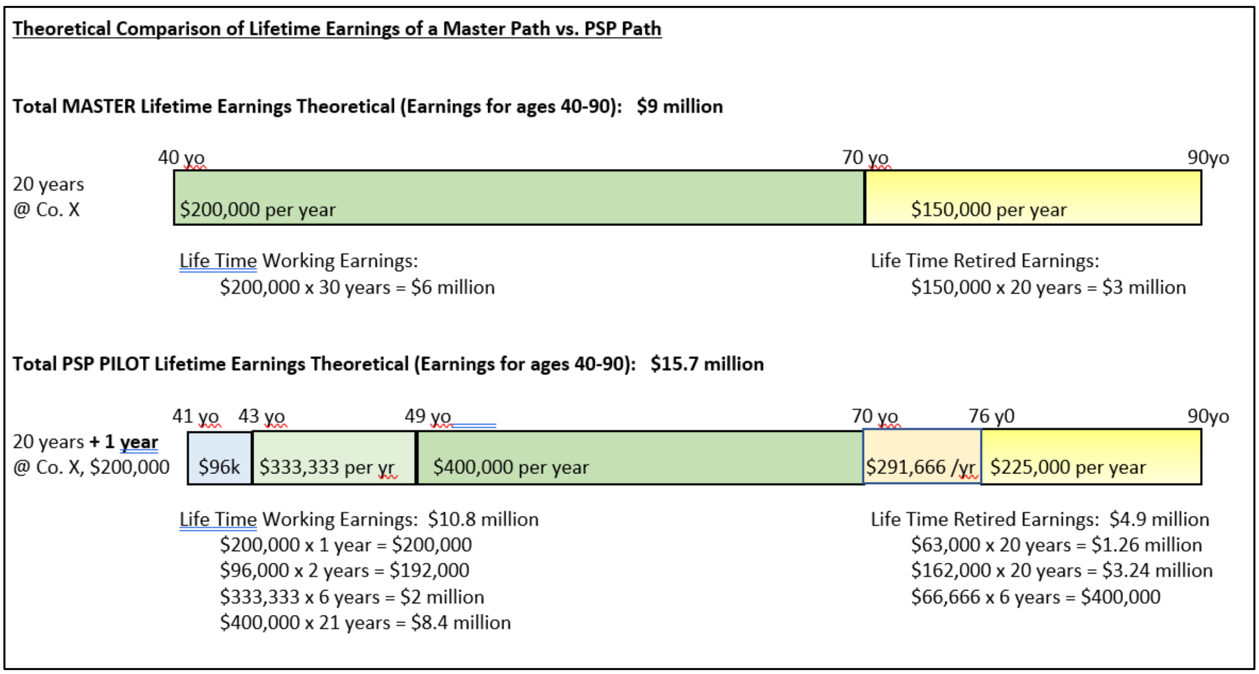


FIGURE N

All these numbers would change over time, so this is not intended to be relied on as a projection, but this oversimplified theoretical comparison demonstrates that, if all things are held equal, the approximate potential lifetime earnings in the PSP Pilot pathway are substantially greater than the traditional Master career pathway by almost 75%. That is a substantial amount of additional potential earnings. Moreover, this is a theoretical for a vessel master at the very high end of the compensation scale for candidates; if this comparison was run for a tug master or WSF master, for example, that differential would be much bigger.

Q: What does this theoretical comparison say about retirement benefits for a mid-career move by a vessel master into the pilot trainee program?

A: One should simply not infer that pilots would see reduced retirement income when compared to staying at their prior employer. Given the significant increase in compensation by becoming a pilot, any argument regarding theoretical reductions are frankly not applicable.

Under this theoretical illustration, each pilot receives $4.8 million more in lifetime working revenue than they would have otherwise earned at the high end of a master's salary. Given this additional compensation, a pilot should also be expected to save and invest a significant portion of this money, including in tax-preferred retirement vehicles that should be available to support a retired pilot comfortably.

Q: What is your conclusion of Mr. Woods's claims in light of your comparative analysis?

A: Mid-career moves for masters into pilotage are both highly attractive and lucrative for working pilots and for retirees, and the change in retirement calculations does not result in lower retirement income for pilots. This is true even when accounting for the significant reduction in pay for incoming pilot trainees regarding stipends and for new pilots subject to PSP's "Buy-

In" rules. And this just compares compensation, it doesn't even touch on quality of life benefits for incoming pilots who left jobs that required significantly more days on duty and working, for example WSF masters who average working about 220 days per year. Exh. MM-28.

Q: Do actual, non-theoretical PSP rates of take-home pay confirm that pilots' rates of pay vary significantly from the stated DNI, during the "Buy-In" period described in the PMSA theoretical scenario described above?

A: Yes, payments for "Buy-In" to PSP impacts the actual take home pay of individual pilots and as a result significantly from the stated DNI, and these amounts vary per pilot per year quite a bit. In 2021, the variable reductions to DNI from pilots paying their "Buy-In" back to PSP ranged from $5,200 to $64,200. Exh. MM-29.

Q: Please demonstrate the basis for your conclusion that DNI is not an actual representation of what pilots actually take home in compensation.

A: First, I'd like to point out that my analysis is speculative in large part because while PMSA has asked for anonymized copies of the Schedule K-1s attached the PSP Partnership Tax Return, those discovery requests have been repeatedly denied. Exh. MM-30.

However, in response to our Data Requests, PSP's auditor Ms. Jessica Norris was able to provide a listing of anonymized cash distributions per pilot per month for 2021. Exh. MM-31. PMSA's analysis of this data at Exhibit MM-32 shows that over the course of 2021 the total monthly variants in actual cash payments paid to pilots in 2021 when compared to their stated earnings ranged from a cumulative low of -$122,877 to a cumulative high of -$153,902.

In any given month these variances demonstrate that pilot earnings are highly variable. For instance, in January 2021 each pilot had earnings of $16,211.77, but payments that month ranged from a low of $9,625.99 per pilot to a high of the full earnings payment of $16,211.77 per pilot. A further examination of the range of variants of January 2021's payments show significant stratification of earnings within the pilotage corps, such that: 3 pilots received a check of under $10,000, 17 pilots received a check of between $10,000 and $11,000, 27 pilots received a check of under $16,000, and 6 pilots had checks over $16,000, including 5 pilots at the full earnings amount of $16,211.77. As a result of these variances in January 2021, the average pilot distribution that month was $13,716.44 per pilot, an average variance of -$2,543.32 from the stated earnings, about 15%.

Q: Why are these various levels of actual compensation significant to this rate case?

A: They are significant in two ways: with respect to how much pilots actually take home in cash disbursements and with respect to the attractiveness of pilotage in Puget Sound.

First, with respect to pilots' actual take-home pay, PSP often states that all pilots receive the same compensation. This is not true. Cash disbursements vary widely. Though accrual accounting of published pilot earnings are as calculated, pilots do not receive pay on an accrual method but rather as monthly cash distributions. Newly licensed pilots undergo a six-year buy-in period that significantly reduces their pay. PSP says it is opposed to paying pilots different amounts, but actual cash disbursements show that PSP already does not pay pilots equally.

Second, the fact that pilot applicants are still flocking to Puget Sound attests to its attractiveness to pilots. Candidates spend time and money to apply, prepare to take the exam and simulator evaluation to get on an approved list to then patiently wait—sometimes for years—for a reduction in pay to the training stipend level, and even then still not earn the published earnings for a pilot for the first six years following licensure.

2. PSP has not provided any baseline demographic data upon which to make any attract–and–retain case regarding its "diversity" and "best of the best" claims.

Q: Does PMSA agree that the Puget Sound must be an attractive pilotage district for candidates from a diversity of backgrounds?

A: Yes, of course.

Q: Do you agree with characterizing "diversity in a pilot group" as drawing "pilots from a highly diverse set of maritime industry backgrounds," as described in the testimony of Capt. Mitch Stoller for PSP at Exhibit MSS-01T, 20:21-22?

A: Yes, absolutely.

Q: Do you agree with Capt. Stoller that "the Puget Sound Pilotage District exemplifies [a] broad diversity of experience among the individual members of the pilot corps" at Exhibit MSS-01T at 21:1-2?

A: Yes, historically, the Puget Sound has been very successful at attracting a diverse set of pilot applicants that represent a wide diversity of experience.

Q: Does any PSP witness demonstrate or attempt to quantify or describe this broad diversity of experience among PSP members?

A: No, I did not see any testimony to that effect in the PSP filing.

Q: Did you provide any testimony to that effect in the prior rate case?

A: Yes, as I described in my testimony (at TP-190976 Exh. MM-1Tr, Section VI) that the Puget Sound has been very successful at attracting prospective trainees and applicants from a wide diversity of experience across the maritime industry. I relied on the statistics included in a Joint Transportation Commission Report (TP-1900976 Exh. MM-1Tr, Fig. GG) at page 13, which I have reproduced in this testimony as Figure O here:

Pilot exam applicants come with a range sea service experiences. In 2016, seven of the 19 applicants came from towing vessels, while five applicants came from cargo or tanker vessels (**Exhibit 13**). *Please note a previous section of this report describes in greater detail typical "feeders" into pilotage.*

Exhibit 13. Sea Service Experience of Pilot Exam Applicants, 2008, 2012, and 2016

Sea Services Category	2008	2012	2016
Cargo or tanker vessels	14	11	5
Organized pilot association or government employed pilot	7	4	0
Passenger or ferry vessels	8	7	3
Special purpose (e.g., fishing and research vessels)	1	2	2
Towing vessels	14	12	7
U.S. flagged government vessels or military	2	1	2
Total	**46**	**37**	**19**

Source: Washington State Board of Pilotage Commissioners, 2017.

FIGURE O

Q: Why does the Puget Sound remain such an attractive place to pilot for such a diverse array of potential trainee candidates?

A: The Puget Sound has historically benefitted from a large pool of local and talented mariners. This pilot applicant pool primarily reflects the diversity of the many different types of maritime activities that are present in the Pacific Northwest. The demographics of this robust talent pool are demonstrated by the statistics provided by the US Department of Labor's Bureau of Labor Statistics, provided in Exhibit MM-33.

Q: Why is it important that this historical baseline was established in your prior testimony and why is it worth repeating here?

A: While PSP has presented numerous opinions regarding issues of diversity here, it has presented no detailed demographic facts. As a result, PSP has not given the Commission or PMSA any context for its claims about diversity in its testimony. We do have baseline data from the JTC Report, but this is not reflective of the demographics of the 2018 or the 2021 exams, and PSP has not provided us with any information from which we can analyze its claims about diversity and diversification.

Q: What types of demographic data would you expect to see in order to measure or analyze diversity claims or changes in pilot diversity?

A: In addition to updated information regarding the maritime experience of pilots prior to beginning their training in Puget Sound, I would expect to see a complete survey of the age, gender, ethnicity, place of residence and maritime experience summary for each pilot, applicant, and trainee. In addition, this would need to be correlated to whether a candidate successfully completes the training program. This could highlight indicators of success or failure and insight into prospective candidate efforts to prepare themselves to compete for a pilot license.

Q: How is the need for this data regarding diversity related to issues of attracting and retaining pilots?

A: Since PSP has not provided us with any applicant, trainee, or pilot demographic data in its testimony, there is no way for us to evaluate its current claims or evaluate how its claims have evolved or might potentially evolve over time. What are the demographics of the 2021 pool of applicants? Without this information we cannot tell how they differ from 2016 or 2018. Nor could we in the future relate back to 2023 to test the validity of PSP claims. The first indication that a potential pilot is attracted to the Puget Sound occurs upon application to take the trainee exam. Without demographic data, no one can claim to know who has been attracted and who has not been attracted.

Moreover, trends among certain types of groups that may have applied but disproportionately failed to pass the exam or make it through training to completion is crucial data. But without PSP (or BPC) establishing additional this data, it is impossible to measure or analyze PSP's diversity claims.

Q: Is it enough to know that the Puget Sound Pilots is (1) all male except for one pilot, and (2) overwhelmingly, if not exclusively, white? Based on this alone should we conclude PSP needs to improve its diversity?

A: Yes and no. The general observation of the lack of diversity in licensed pilots, and the lack of diversity at all levels of the maritime pyramid, is absolutely a sufficient basis for the BPC to justify significant efforts to improve inclusiveness and opportunities to earn a pilot license for communities that have not historically been represented in the pilotage corps. On the licensing side, it is important to begin to recruit, change the culture, and be inclusive. Metrics and demographics are key when measuring the success of such efforts.

But where is PSP's evidence of any demographic baseline in this case? A generalized discussion of such policy goals is nowhere near sufficient as a basis to justify a change in rates. That would require relevant data to objectively measure trends and analyze claims with respect to any correlation of rates and ability to attract highly qualified diverse candidates. Facts and evidence supporting any such correlation is simply absent here, and speculation, guesswork and emotional arguments cannot substitute for such evidence. And we would further note that there is no baseline from the prior rate case to which we can refer either because, while PSP has chosen to make its arguments in this rate case about diversity, PSP made no mention at all of DEI considerations in its prior tariff filing.

Q: Why is it important to have a definition of diversity along with data that matches that definition?

A: PSP's discussion of diversity is sometimes about gender, and at other times about maritime experience and background. For its part, the BPC also discusses race and ethnicity and age as issues. Demographic data from existing licensees, trainees, and exam applicants is essential to analyze any claims regarding these demographics. These are complex and serious social issues, so they must be treated as such. There is no data here to do that because we lack data on pre-piloting maritime experience, age, gender, and racial and ethnic information for pilots, trainees, and applicants.

Most importantly for this case, there is no data correlating any of this to rate setting. In fact, as previously decided by the Commission, there has been more than sufficient tariff and revenue to attract highly qualified pilot candidates to successfully complete a rigorous training program and achieve the lofty goal of becoming a licensed pilot.

Q: Are there additional categories of applicant data missing from PSP's petition that impact consideration of attracting new pilots?

A: Yes, the same lack of information and measurement relates to PSP's claims about its need to recruit the "best of the best" pilot applicants and trainees. These claims about applicants likewise do not have metrics. Despite being asked repeatedly to provide a basis for determining how PSP can determine if potential pilots are or are not among the elite caliber of applicants that they are claiming to seek, no such information exists.

Q: If there is no way to determine whether a pilot applicant is or is not the "best of the best," how does one quantify whether this goal has or has not been met?

A: It is impossible. Even if this applicant pool exists theoretically, no one can tell when the BPC has actually received an application from a potential trainee who is among the "best" or not among the "best." This also means that it would be impossible for the Commission to know or verify whether PSP claims about the current rate are untrue, and impossible to evaluate the nature of the relationship between rates and applicant quality in the future as well, as no trend line could be established or analyzed. PMSA has asked PSP for such data, but none is ever provided.

While that data likely does not exist, what does exist is a comprehensive and rigorous qualification and training program to determine if a pilot candidate deserves to be licensed. Licensing standards exist throughout society and are key in the transportation sector, including airplane pilots and ship masters, and replicated through qualification boards in the military for shipboard, aircraft and other key duties. If an applicant meets these adequacy requirements, then they are qualified to receive a license. Period.

Q: What do we know about the quality of applicants who want to be admitted to the Puget Sound pilot training program?

A: What we know is what the BPC reports about applicants during the exam, training, and licensing process. We know whether an applicant has a background and experience which meets or exceeds standards necessary to be considered qualified to sit for the exam. We know whether a qualified applicant has demonstrated the knowledge adequate to pass the written exam when the BPC allows a candidate to continue to the simulator evaluation. We know an applicant becomes a trainee candidate when they have proven that they have the adequate skills and knowledge to rank on the trainee list after successful completion of the written and simulator exams. And we know a trainee is ready to be licensed when the BPC concludes that they have successfully completed the pilot training program. But at no point during this process do we know whether this applicant, candidate, trainee, or licensee was among the "best of the best" when they applied to the program.

Q: Even if it were possible to know, would knowing who the "best of the best" pilot applicants were impact the quality of the training provided to trainees or applications received?

A: No, it is completely irrelevant to the training and application process. Only qualified applicants can sit for exams. Only applicants that pass a written exam can take the simulator exam. Only applicants that score highest on the combined written and simulator exams can become trainees. Only trainees can successfully complete the training program and meet the minimum but significant and relevant qualifications to be awarded a pilot's license. Upon being awarded a new pilot's license, did it matter how well that new pilot had looked on paper many years earlier when they first submitted an application to the BPC? Obviously the answer is no, and because there is no such measurement of any such metric in this program, PSP has no basis to argue otherwise.

Q: Does the lack of a "best of the best" metric in any way impact the quality of the actual pilots who are licensed?

A: No. In our opinion, this entire conversation regarding whether Puget Sound is attracting the "best of the best" in its applicant pool is completely and conclusively moot because of the rigor of the BPC training and licensing program. The State of Washington, acting by and through the BPC, has determined whether an individual has all the necessary qualifications and experience, passed all the tests, acquired all the adequate skills, was adequately trained, and expended the necessary time to earn the right to be licensed as a pilot on the Puget Sound. This is quite an accomplishment. As PSP likes to say, it is the pinnacle of the maritime career ladder for many mariners. Once someone has achieved all of this in their career, it is hard to imagine any productive reason why the competency and skills of any such individual should be second-guessed based on how they might have stacked up on paper when compared to a theoretical pool of other potential trainees before they even applied for a spot in the program.

3. Local Puget Sound mariners remain a large applicant pool from which PSP can attract qualified candidates.

Q: What are the employment dynamics within the local maritime industry that create a large applicant pool of potentially qualified candidates for Puget Sound pilots?

A: As noted in ¶ 153 of the Final Order of the prior rate case, in 2019 the 90th percentile of their incomes was approximately $157,000 per year (for the Seattle-Tacoma-Bellevue area). TP-190976 Exh. JCR-3.

Q: Did PMSA provide a historical look at the rates of compensation and size of the employee labor pool in the prior rate case?

A: Yes, the spreadsheet with this employment information from the US Bureau of Labor Statistics for Masters, Mates, and Pilots was provided in the prior rate case for the years 2014-2019 for National, Washington, and Seattle-Tacoma-Bellevue statistics. TP-190976 Exh. JCR-3.

Q: In the latest BLS update, what happened to the 90th percentile of these incomes for the Seattle-Tacoma-Bellevue area?

A: The latest update from the BLS for the Master, Mates and Pilots from May 2021 for Seattle-Tacoma-Bellevue shows that the 90th percentile income dropped to $138,290. Exh. MM-33.

Q: Do you agree with Mr. David Lough's testimony for PSP at Exhibit DL-01T 5:23-24 that the "[w]ages paid to tugboat captains are particularly relevant because the tow boat industry is one of the occupational feeder pipelines from which PSP pilots are drawn"?

A: Yes. As I testified to in the prior case, tug operations are a significant source of pilot trainees.

Q: Does the calculation at Exhibit DL-01T 6:7 by Mr. Lough of an IBU tug captain in the Pacific Northwest making an annual wage of approximately $158,000 in 2022 seem reasonable?

A: Yes. This is close to the $138,290 for the 2021 Seattle-Tacoma-Bellevue 90th percentile wages, though our members report tug captain wages vary and can be much lower than this depending on the company, tug service involved, and other factors.

Q: Why are these statistics important to consider with respect to the ability of Puget Sound to continue to attract qualified pilot applicants?

A: As noted by the Commission in the Final Order in the prior case, these data points help to demonstrate why there is never a shortage of qualified applicants for each exam in the Puget Sound and why tremendous incentives exist for applicants to try to get into the pilotage training program. These incentives to apply to the Puget Sound pilot training program exist based on the tremendous jump in pay scale, even from jobs paying in the 90th percentile, when a master becomes a pilot. Because the jump in pay is so large, this incentive exists regardless of any changes in the tariffs and rates on the margins, up or down, of pilot compensation. And when one considers that with this jump in pay also comes an improvement in lifestyle and reduction of working hours, this incentive takes on even sharper focus.

4. The attractiveness of Puget Sound pilotage is pervasive and not variable with temporal or marginal changes in the tariff because applicants are attracted to lifetime earnings, not immediate or short-term changes to DNI.

Q: When applicants first apply to sit for a BPC pilot exam, should they expect to immediately earn the published DNI for pilots in the year that they take the exam?

A: No, an applicant can't earn a license and full DNI until (1) opening in the trainee program occurs, which can take several years; (2) they successfully complete training, which on average takes several additional years; and (3) they complete a buy-in required by PSP over the first 6 years of being licensed. By that time, DNI may be substantially different as a result of changes in the volume and type of ship traffic, the number of pilots, or the management of expenses by PSP, all of which in combination may fluctuate from year to year.

Q: All together, how many years in the future could they be waiting before they actually take home a full share of DNI?

A: Depending on the circumstances, 7.5 to 12 years. This is broken down as follows:

(1) The time that a candidate could be on the trainee program waiting list varies based on two factors: the time it takes for a spot to open in the training program and the candidate's position on the waiting list. This ranges 0 to 4 years. If ranked #1 on the candidate list <u>and</u> there is an immediate opening in the training program when the pilot exam results are finalized, a candidate could immediately become a trainee and functionally

never be on the waiting list at all. The other extreme could occur if you are the lowest ranked candidate on the list and there have not been enough openings in the training program to fully exhaust the waiting list until the last day of the last year of the validity of the list.[2] Pilot exam waiting lists expire at 4 years, so there is always the possibility that a candidate on the waiting list would have to go through the exam process again (fortunately, to the best of my recollection, the BPC has not been forced to make a candidate on a waiting list repeat the process again).

(2) Trainees typically progress through the training program in 18 months. The BPC reported the 2016 list of candidates training times in the 2020 annual report with a range of just over 14 months up to nearly 24 months. The maximum time using (1) the longest waiting time of four years plus (2) the longest training time of two years amounts to a total of six years.

(3) Finally, once a trainee is licensed as a pilot, it takes another 6 years before they can expect to take home a full pilot share because they are required during this time to be contributing to the pilot buy-in. See Exh. MM-62 (PSP Response to PMSA DR 168).

As a result of all of these variables, it could take a candidate up to 12 years to earn a full share of the published DNI.

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[2] For accuracy's sake, of course it is also possible that if no opening in the training program ever becomes available that candidates that are lowest ranked on the waiting list will actually never make it into the training program at all. For purposes of this evaluation, such a scenario is irrelevant because it does not answer the direct question of how long someone could wait to make it to a full share of DNI, but in an indirect answer to this question, in such an instance, theoretically, if that same individual who fell of the end off the waiting list sat for the next pilot exam in order to get on the next list as well, the range of time could be extended by an additional number of years.

Q: What type of compensation can be expected by candidates and trainees during this period?

A: During this time, pilot candidates and trainees are not taking home pilot DNI.

A candidate on the waiting list earns whatever wages they are paid for the job that they are continuing to do while waiting for a spot to open. Assuming a local candidate is working at 90th percentile of area wages under the BLS statistics for Masters, Mates, and Pilots (see Exh. MM-33), that is $138,290 per year.

A full-time trainee as defined and validated by the BPC earns a stipend paid by the BPC at a rate of $8,000 per month or $96,000 per year, and there are no benefits. This is significantly less than the candidate's prior compensation (income plus benefits) and pilot DNI.

Q: What type of compensation can be expected by newly licensed pilots?

A: For their first 6 years after licensure, PSP deducts an amount for the PSP buy-in requirement. This amount depends on the variables detailed in the PSP bylaws, but for example, in 2021 this amount was $5,352. Exh. MM-29, Exh. MM-62.

Q: Does this amount differ from the amounts reported as a full pilot's share of earnings in the PSP financials?

A: Yes, actual pilot compensation can vary significantly from the stated earnings of pilots in the PSP financials. This variance can be as large as $6,704 per month based on a comparison of stated earnings in the financials and actual pilot compensation from December 2021, as demonstrated at Exh. MM-32 (PMSA Analysis of PSP Response to PMSA DR 176) and illustrated here in Figure P:

December distribution totals paid in January 2022

Pilot No.	Earnings for December 2021	Actual Check for December- Paid in January 2022	Actual Check Paid vs. Earnings
83bx8	$17,966.32	$11,261.42	-$6,704.90
yt58r	$17,966.32	$11,468.80	-$6,497.52
39iu8	$17,966.32	$11,477.64	-$6,488.68
91tm2	$17,966.32	$11,504.44	-$6,461.88
81ee4	$17,966.32	$11,556.80	-$6,409.52
23hh7	$17,966.32	$11,790.25	-$6,176.07
sb24b	$17,966.32	$11,807.75	-$6,158.57
yl91z	$17,966.32	$11,821.74	-$6,144.58
dl98x	$17,966.32	$11,825.01	-$6,141.31
28id8	$17,966.32	$11,829.55	-$6,136.77
76rm0	$17,966.32	$12,058.39	-$5,907.93
co27p	$17,966.32	$12,067.68	-$5,898.64
by55k	$17,966.32	$12,207.26	-$5,759.06
br77l	$17,966.32	$12,270.51	-$5,695.81
zc62d	$17,966.32	$12,275.63	-$5,690.69
71qw2	$17,966.32	$12,327.43	-$5,638.89
90sl9	$17,966.32	$12,474.52	-$5,491.80
bl25h	$17,966.32	$12,571.66	-$5,394.66
ab65r	$17,966.32	$12,609.90	-$5,356.42
jr95l	$17,966.32	$12,721.66	-$5,244.66
zr76t	$17,966.32	$12,883.39	-$5,082.93
74se9	$17,966.32	$16,706.90	-$1,259.42
aq62v	$17,966.32	$16,720.18	-$1,246.14
kl469	$17,966.32	$16,772.75	-$1,193.57
52yz8	$17,966.32	$16,795.13	-$1,171.19
84gv8	$17,966.32	$16,803.72	-$1,162.60
pr28w	$17,966.32	$16,803.72	-$1,162.60
rs65b	$17,966.32	$16,803.72	-$1,162.60
29xy7	$17,966.32	$16,807.46	-$1,158.86
zl95r	$17,966.32	$16,841.03	-$1,125.29
96bv2	$17,966.32	$16,844.96	-$1,121.36
mr51t	$17,966.32	$16,846.44	-$1,119.88

December distribution totals paid in January 2022

Pilot No.	Earnings for December 2021	Actual Check for December- Paid in January 2022	Actual Check Paid vs. Earnings
zb82e	$17,966.32	$16,850.31	-$1,116.01
ad68v	$17,966.32	$16,852.49	-$1,113.83
av26v	$17,966.32	$16,865.24	-$1,101.08
10bl4	$17,966.32	$16,881.63	-$1,084.69
bz34q	$17,966.32	$16,922.75	-$1,043.57
tr65y	$17,966.32	$16,944.67	-$1,021.65
ky5u	$17,966.32	$16,960.12	-$1,006.20
38tf7	$17,966.32	$16,964.24	-$1,002.08
87rz3	$17,966.32	$16,968.02	-$998.30
bb75y	$17,966.32	$16,969.52	-$996.80
vs12z	$17,966.32	$16,971.52	-$994.80
72ls9	$17,966.32	$16,979.30	-$987.02
lt193	$17,966.32	$16,993.67	-$972.65
vz11y	$17,966.32	$17,080.46	-$885.86
ju15t	$17,966.32	$17,141.32	-$825.00
zz59b	$17,966.32	$17,141.32	-$825.00
ks55c	$17,966.32	$17,553.33	-$412.99
pq92l	$17,966.32	$17,816.32	-$150.00
ty82m	$17,966.32	$17,966.32	$0.00
Total	$916,282.32	$762,379.99	-$153,902.33

FIGURE P

Q: Based on the above, do you believe that any one specific year's DNI is what attracts a pilot applicant to the pilotage grounds?

A: No, it is logical to acknowledge there are many factors involved beyond any one specific year's DNI. Considerations that have been mentioned involve enhanced quality of life, working close to home, more family friendly working demands, spending significantly less time on a ship working, all in addition to much greater compensation than the compensation of jobs making up the pilot candidate pool. With respect to just DNI, candidates know as a pilot they will enjoy an increase their income over their prior job, but with any research at all they would also know that it is many years in the future. Pilot candidates should also know that the reported DNI of what pilots get paid on a year-to-year basis fluctuates, as reflected in publicly available BPC Annual Reports. Therefore, DNI in a particular year is fundamentally irrelevant for applicants, trainees, and even for newly licensed pilots who are, as discussed above, willing and able to work for much less. From a personal economic benefit point of view, the financial attractiveness of this profession is more likely connected to a vision of overall future lifetime earnings, not short-term or immediate changes in compensation as a trainee or a licensed pilot still completing a buy-in. The trainee period in particular puts the powerful attractiveness of lifetime earnings over short-term income in perspective. It requires a pilot applicant to be committed to the training program and dedicated to the pilotage ground that they have chosen because pilot trainees will be living off of a stipend with no benefits during this period that is almost certainly a substantial cut in compensation when compared to their existing compensation, not to mention the significant difference between DNI and the stipend.

Q: What was the reported net income for pilots in the Puget Sound in between the 2018 exam and the 2021 exam?

A: Reported PSP pilot net income in 2019 was $369,647, in 2020 it was $204,581, and in 2021 it was $295,617. Exh. JR-5 and Exh. JR-6.

Q: Were all of these income figures less than the 2021 and 2022 DNI target set by the Commission in the prior rate hearing?

A: Yes.

Q: **Did the reduction of actual pilot reported net income depress the number of candidates who applied for a pilot license in the Puget Sound in 2021?**

A: No, to the contrary, the 2021 exam attracted the second most candidates in over a quarter of a century.

Q: From this outcome, would you conclude that the actual income of pilots was the primary factor for applicants when choosing to apply for a pilot license in Puget Sound?

A: No.

Q: Was it possible that this was impacted by the pandemic?

A: Possibly. All we do know is that even when the impacts of COVID were at their worst, reducing ship traffic and pilotage revenue, no mass exodus of licensed pilots or trainees or candidates on the waiting list occurred.

Q: Why is this important to consider in this rate case?

A: Again, in the prior rate case, the Commission acknowledged that there has never been a documented shortage of qualified applicants in the Puget Sound and that tremendous incentives exist for applicants to try to get into the pilotage training program based on the tremendous jump in pay scale, even from jobs paying in the 90th percentile in the applicant pool. And we know that the overall work hours on a vessel is far less than pilot candidate pool jobs like with the Washington State Ferries, deep draft vessels, or tugs. The fact that candidates, trainees, and even newly licensed pilots continue to work through a process that immediately demands that they need to give up substantial amounts of short-term income further confirms that the financial incentive, apart from workload reduction and quality of life incentives, exists regardless of any temporal or marginal changes in the tariffs and rates with respect to specific year-to-year pilot compensation.

Q: Is it possible for any applicant to actually know what they will be earning in 6 to 12 years after they pass a pilot examination based on current year DNI?

A: No, they could only estimate potential future lifetime earnings because nobody knows what DNI will be like several years from now.

Q: Do you believe pilot applicants would base their estimate of potential future lifetime earnings on historical pilot income?

A: Yes, and I believe that common sense would dictate that pilot applicants weighing whether to apply would necessarily consider potential future lifetime earnings based on the most conservative outlook for revenues and the most pessimistic growth in income possible.

Q: Given all the above, what is the best evidence that demonstrates whether potential pilot applicants still found the Puget Sound an attractive place to take the risk to earn these potential future lifetime earnings?

A: The best and most recent evidence is the 2021 BPC Pilot Exam process. This application period yielded a class of candidates within the same adequate and regular size range as the previous six exams going back to 1996, and these candidates came from the second largest crop of qualified applicants to the Puget Sound to sit for pilot exams in the past quarter century. There is no basis for a claim that we have a problem with attracting qualified applicants to the Puget Sound.

B. There have been no substantial increases in risks to vessels or pilots when compared to the baseline considerations of risks adopted in the prior rate case.

1. The Commission explicitly incorporated principles of relative risk into the tariff structure in the prior rate case and rejected claims of absolute risk increases.

Q: Did the Commission's Order in the prior rate case already build a vessel risk baseline into the current tariff structure?

A: Yes, the Commission deliberated on the question quite specifically at ¶¶ 341–362 of the Final Order.

Q: How did the Commission incorporate vessel risk into the new tariff?

A: The Commission was explicit about its consideration of risk in the current structure of the tariff, was deliberate about its consideration of risks in light of various recommendations by the parties.

Ultimately, the Commission agreed with PSP (and rejected the Staff recommendation supported by PMSA) to weight hours over tonnage in the new tariff structure, reasoning that weighting tonnage over hours was a more appropriate reflection of pilotage risks. The Order at ¶ 361 found that "[f]or pilots bringing a ship into harbor, larger vessels pose relatively greater risk and should thus pay proportionately more in tariff rates," citing PSP testimony that "the larger vessels reasonably pose greater risks." On that basis, the Commission concluded that "[b]y placing greater weight on the tonnage charge, as PSP advocates, PSP appropriately charges these larger vessels for creating greater risks relative to smaller vessels."

Q: In agreeing with PSP and building the tariff structure such that the rates that are adopted reflect the relative risks posed by different vessels, did the Commission decide that risk should be a factor in raising rates?

A: No. With respect to this question the Commission came to the conclusion at ¶ 360 of the Order that "risk should not be a factor in raising rates" in the prior rate case as it found no "evidence that *absolute* risk is increasing for pilots in the Puget Sound, which would justify greater compensation." The Commission, however, did find that "in terms of pilotage rate design, it is appropriate to attribute costs to the vessels based on *relative* risks."

Q: Does PMSA agree with the conclusion of the Commission in ¶ 360 regarding the consideration of *absolute* and *relative* risks?

A: Yes.

Q: Does PMSA agree with the conclusion of the Commission in ¶ 361?

A: While we continue to believe that the original rate structure proposed by UTC Staff in the prior rate case was the most accurate and proper reflection of the relative risks, PMSA accepts the conclusions of the Commission at ¶ 361 as well-deliberated and reasonable.

2. With respect to risks posed by vessels in pilotage, the risks remain substantially and materially unchanged when compared to the prior rate case.

Q: Has PSP provided testimony alleging to be applicable to the issue of vessel risk and pilotage risk in this current rate case?

A: Yes, PSP has submitted voluminous testimony regarding vessel or pilot risks in this case. This includes the following:

- Dr. Czeisler, Exh. CAC-1T, regarding fatigue risks;
- Mr. Costanzo, Exh. CPC-01T, regarding oil spill risks and foreign flag vessel risks;
- Capt. Jordan, Exh. DJ-01T, regarding pilotage risks on the Columbia River Bar;
- Capt. Klapperich, Exh. ECK-01T, regarding pilotage risks on the Puget Sound;
- Capt. Carlson, Exh. IC-01T, regarding pilot boarding risks;
- Capt. Stoller, Exh. MSS-01T, regarding casualty risks involving vessels under pilotage and the risks of piloting larger vessels; and,
- Capt. Bendixen, Exh. SB-01T, regarding pilot ladder risks.

Q: Do you find any of this testimony to be credible with respect to the presence of risks either to vessels under pilotage or risks to the pilots themselves?

A: While the testimony provided and identified above touches on or identifies actual risk factors in the pilotage profession, I don't agree with many of the conclusions and assertions by the witnesses discussing the risks, and most of this testimony has little to nothing to do with rates of pilotage.

The one exception is the testimony provided by Mr. Costanzo, which does not accurately convey any actual risk factors. I find his testimony to be uninformed as well as disrespectful to the men and women of the US Coast Guard and all of my colleagues in the maritime industry who have dedicated their lives and careers to improving safety in our ports and on our waterways.

Q: Did any of the PSP testimony on vessel risks or risks to pilots identify any material or significant changes in *absolute risk* that might justify a change in compensation since the adoption of the tariff in the prior rate case?

A: No.

Q: Did any of the PSP testimony on vessel risks or risks to pilots identify any material or significant changes in *relative risks* that might justify a change in the attribution of tariff rates and charges among various vessel sizes and types since the adoption of the tariff in the prior rate case?

A: No.

Q: With the exception of the testimony of Mr. Costanzo, please provide your specific opinions regarding the risks discussed in this testimony in turn, starting with Dr. Czeisler, Exhibit CAC-1T, regarding fatigue risks.

A: Dr. Czeisler's testimony does not show any increase in absolute or relative risks for pilots since the last rate case. First, a full and robust presentation of fatigue risks, including a study undertaken by fatigue experts, was a significant part of PSP's presentation in the prior rate case. Now, PSP presents essentially the same discussion of fatigue risks from a different expert in the current rate case.

PSP's expert, Dr. Czeisler, demonstrates the bona fides for his testimony as based on his years of expertise in the field of fatigue in general and examining the practices of certain marine pilots. The basis for his marine pilotage evaluations were his engagements in the Columbia River in 2004 and 2010, Corpus Christi in 2013, San Francisco in 2013, and the Puget Sound in 2017. Exh. CAC-1Tr 11:17-17:4. None of this work indicates any changes since the prior rate case was concluded in 2020.

If anything, Dr. Czeisler's testimony suggests a reduction in absolute risks since the prior rate case. This is because he describes his work for PSP, undertaken in 2021 as helping "Puget Sound Pilots to improve their efficiency without sacrificing safety or prudent fatigue mitigation efforts." Exh. CAC-1Tr 17:6-16. Certainly it would defy logic if his work for PSP to accomplish this goal somehow worsened PSP's fatigue issues.

Dr. Czeisler's testimony is likely of little relevance to this rate case. As the Commission concluded in the prior rate case that it would not determine an Average Assignment Level under its formula "for purposes of safety or fatigue management" because "these issues fall squarely within the BPC's purview." Order 09 at ¶¶ 86, 451.

Q: What is your opinion regarding the pilotage on the Columbia River Bar as discussed by Capt. Jordan, Exhibit DJ-01T?

A: None of Capt. Jordan's testimony speaks to changes in absolute or relative risks in pilotage in the Puget Sound, much less to changes since the prior rate case. Moreover, much of Capt. Jordan's testimony speaks to how much riskier pilotage is on the Columbia River Bar than pilotage is in many other pilotage grounds, including the Puget Sound. I wholeheartedly agree that the boarding arrangements in the Puget sound are much less risky for PSP pilots than they are for Columbia River Bar pilots. But none of these risks have changed to any appreciable degree since the prior rate hearing.

Q: What is your opinion regarding the pilotage on the Puget Sound as discussed by Capt. Klapperich, Exhibit ECK-01T?

A: None of Capt. Klapperich's testimony speaks to changes in absolute or relative risks in pilotage in the Puget Sound, much less to changes to risks since the prior rate case. While I agree with much of Capt. Klapperich's identification of the skills required of, tasks undertaken by, and risks faced by Puget Sound Pilots, none of these identified risks have increased or changed to any appreciable degree since the prior rate hearing.

Q: What is your opinion regarding the risks associated with pilot boardings and pilot ladder issues on the Puget Sound as discussed by Capt. Carlson, Exhibit IC-01T, and Capt. Bendixen, Exhibit SB-01T?

A: I agree that pilot ladder safety is one of the most important risk factors faced by pilots. That is true around the world in every port that every vessel calls and not unique to the Puget Sound. Unfortunately, many of the worst accidents that have involved pilot fatalities have been tied to pilot ladder accidents. This is one of the reasons why the maritime industry globally is subject to rules promulgated by the International Maritime Organization (IMO) and promulgated through SOLAS rules which govern the safe deployment of pilot ladders. They have been in place in their current iterations since 2011 and 2012, respectively. Capt. Bendixen cites these same authorities are and ably describes them as necessary to help protect pilots worldwide from accidents and injuries.

As identified in my testimony in the prior rate case and in Capt. Bendixen's testimony, the focus on pilot ladder issues is a constant, ongoing, and continuous job, as well it should be. This is important to underscore. First, I agree with Capt. Bendixen that while vessels must take responsibility for non-compliant ladders, it is important for pilots to notify authorities and demand compliance from vessels including by refusing to board ships that fail to provide a safe transfer arrangement. Exh. SB-01T 27:12-24.

Second, I also agree with PSP's policy to "report all non-compliant pilot transfer arrangements to the U.S. Coast Guard, BPC, and when necessary, to the vessel's classification society." Exh. SB-01T 27:20-22. As Port State

Control enforcement, the US Coast Guard has the duty to enforce vessel safety rules and identify vessels with pilot ladder deficiencies. In my experience, Port State Control enforcement is a duty that the Coast Guard takes very seriously.

Also, as Capt. Bendixen points out, it is important to share information regarding deficient pilot ladders with the ship's next port of call. This is a safety precaution that PMSA supports as a best practice in many jurisdictions, including in California. This practice was codified into statute by the California State Legislature in a PMSA-sponsored bill, SB 1408 (Chap. 794, Statutes of 2012), which added Section 1156.7 to the California Harbors and Navigation Code. As adopted, this statute requires affirmative action by the Executive Director of the California state Board of Pilot Commissioners:

> If the executive director of the board alerts the United States Coast Guard to a violation or likely violation of safety standards pursuant to Section 1156.6 and has reason to believe that the violation or likely violation will not be corrected prior to the vessel reaching its next port of call, the executive director shall request the United States Coast Guard to report the suspected safety standard violation to the port state control officer or a pilot organization in an expected future port of call. This section does not preclude any other party from disseminating any report of the findings and recommendations of the executive director of the board pursuant to Section 1156.6, and all of those reports and findings shall be considered public records.

It is also good to hear that even some vessels that have had pilot transfer arrangements that the pilots have found problematic since the early 2000's were improved and modified in 2021 and 2022. Exh. SB-01T 18:6-12. This is a very good development that is reducing risks. In my opinion, this reduction in risk is likely resulting from the heightened scrutiny of pilots and reports to authorities, like that instituted by PSP to document these deficiencies, as described by Capt. Bendixen including the PSP reporting form at Exhibit SB-08.

However, none of this testimony speaks to changes in absolute or relative risks in the use or deployment of pilot ladders in the Puget Sound, including to specific changes to risks since the prior rate case. While I agree with much of Capt. Bendixen's identification of the risks faced by Puget Sound Pilots, regulators, pilots and industry pay increasingly significant attention to this issue based on reports from pilots themselves. So these identified and well-known risks are not likely increasing to any appreciable degree, much less in the short amount of time since the 2020 rate hearing. However, there is evidence that pilots are more assertive in reporting issues and sharing that information with the Coast Guard and other pilot groups, which is an essential step to improving the situation.

Lastly, I would like to point out that this is not simply a Puget Sound pilot issue. It is a universal risk for all pilots and other mariners and law enforcement officers that may need to use a ladder to board or exit a vessel. As an example, please find attached a copy of the latest report to the Long Beach Harbor Safety Committee from the Jacobsen Pilot Service, which details several recent pilot ladder incidents encountered by vessels calling on their pilotage district, including one with a pilot ending up in the ladder and thankfully not seriously injured or killed by the incident. Many of these same vessels that call in the Los Angeles/Long Beach port complex also call on the ports in the Puget Sound. Exh. MM-34. Everyone in the maritime industry must ensure that these and other critical pieces of equipment remain well maintained, up to code, and safely deployed.

Q: What is your opinion of the testimony of Capt. Stoller, Exhibit MSS-01T, regarding casualty risks involving vessels under pilotage and the risks of piloting larger vessels?

A: On the first subject, Capt. Stoller's testimony at Exhibit MSS-01T 5:21-14:6 regarding his perception that "risks involved with serving as a state-licensed pilot[] on a heavily trafficked pilotage ground" are "persistent and growing," his conclusions are exceptionally problematic and lack supporting evidence. Furthermore, his reference to a heavily trafficked pilotage ground does not involve any normalized comparisons between the Puget Sound and any other region. On the second subject of his testimony, regarding increasing risks associated with larger sizes of vessels, Capt. Stoller essentially repeats the testimony provided by PSP in the prior rate case and which is already built into the baseline considerations of the existing tariff on the basis that it presents opinions regarding relative risk.

Q: Please explain why Capt. Stoller's testimony that pilotage risks are "persistent and growing" is wrong.

A: This is just simply not the case. The report that Capt. Stoller relies upon to back up this assertion, the IGP&I Report at Exhibit MSS-03, not only demonstrates the exact opposite conclusion than the one he asserts, but it is meant to measure an entirely different type of risk: the risk that pilotage errors impose on vessels when the pilot has caused or contributed to an accident which has resulted in an insurance claim. These are not risks to pilots; these are risks to vessels, crew, cargo, environment and economy as a result of pilot errors or negligence.

As discussed in the report summary, in the 20 years from 1999-2018 "there were a total of 1,046 incidents in which pilot error either caused or contributed to those events. The total costs of those incidents was over US $1.82 billion. On average this represents 52 incidents per year, or one per week." Exh. MSS-03 at 5.

The last three years of the Report's range, 2016 to 2018, showed lower than average incidents per year (42, 45, and 34, respectively). Table 1 from the Report at Exhibit MSS-03, pg 5, is reproduced here as Figure Q:

Table 1

UW Year	No. of Incidents	Total Cost	Average Cost per Incident	Allision and FFO	Collision	Grounding	Navigation
1999	33	$21,761,748	$659,447	26	6	1	0
2000	47	$35,371,471	$752,584	29	13	5	0
2001	70	$51,090,973	$729,871	45	21	4	0
2002	52	$41,662,008	$801,192	38	9	4	1
2003	56	$106,305,096	$1,898,305	35	16	3	2
2004	59	$76,596,850	$1,298,252	29	20	10	0
2005	46	$39,563,866	$860,084	20	20	5	1
2006	54	$112,306,540	$2,079,751	29	20	5	0
2007	57	$306,538,481	$5,377,868	30	20	6	1
2008	57	$50,811,280	$891,426	31	22	4	0
2009	38	$149,212,660	$3,926,649	26	10	2	0
2010	32	$70,436,063	$2,201,127	23	7	2	0
2011	59	$76,077,997	$1,271,310	32	25	2	0
2012	74	$130,646,688	$1,765,496	49	21	4	0
2013	42	$107,118,832	$2,550,448	25	13	4	0
2014	79	$144,241,993	$1,825,848	39	32	7	1
2015	70	$134,125,800	$1,916,083	40	25	4	1
2016	42	$66,593,613	$1,585,562	27	9	6	0
2017	45	$42,425,808	$942,796	32	10	2	1
2018	34	$58,769,271	$1,728,507	25	8	1	0
Totals	**1,046**	**$1,821,657,039**	**$1,741,545**	**630**	**327**	**81**	**8**

FIGURE Q

While one could, unfortunately, make the claim that this Report shows that the risks posed to vessels by piloting errors are persistent, there is certainly no basis for a claim that these risks are growing in the last years of the report of 2016-2018.

The Report also has a breakdown of incidents by country and port in Tables 7 and 8, at Exhibit MSS-03 at 15. The United States has the dubious distinction of leading the world in incidents resulting from pilotage error, but missing from the list of the 79 Ports with 3 or more incidents globally since 1999 is Seattle, Tacoma, or any other ports in the Puget Sound.

The conclusions drawn from this more specific review of pilot errors by geographic location are unambiguous: "The timeline of incidents for the top four ports in Table 8 has been examined. **No particular trend is evident in any of these ports**. The incidents in Houston, Singapore, Antwerp and New Orleans occurred in 14, 10, 13, and 7 separate underwriting years respectively. In 28 of those years there was only one incident. The year with the greatest frequency was 2014 in Singapore where there were 7 incidents, the majority of which (4) were collisions with other vessels. This no doubt reflects the traffic density at that port." (Emphasis added.)

As the Puget Sound's ports are not even included in the lists of incidents, it is hard to conclude from this report that the risks—whether posed to pilots by vessels, or by vessels to pilots—are either persistent or growing.

Q: What conclusions do you draw from the IGP&I Report that address the issue of risk in the current rate case?

A: That it is impossible to infer a trend of persistent and growing risks from this report. In addition, not only were risks globally "below average" during the last three years of this report, from 2016-2018, when compared to the entire 20-year period of 1999-2018, but the Puget Sound did not even appear on the list of 79 ports with 3 or more accidents over the same time period. There are no trends that the Report could draw even with the ports that were on the list, meaning that it would be impossible to draw a trend specific to the ports that had so few incidents so as to not make this list.

Finally, the data precedes the adoption of the current tariff. This means that it cannot speak to any changes in absolute risk or relative risks in the Puget Sound since 2020.

Q: Does Capt. Stoller's testimony regarding the risks associated with larger vessels add anything to evidence on this subject in the prior rate case?

A: No. As described above, the Commission already evaluated the risks posed by larger vessels and decided incorporated that relative risk in the structure of the pilotage tariff. Capt. Stoller presents the same assertions that the Commission has already accepted and applied to the existing tariff. Neither Capt. Stoller's testimony nor any of the documents submitted with it propose any changes to the relative risk calculations already directed by the Commission in the prior rate case.

Q: Do the BPC's reports summarizing incidents which occur on vessels under pilotage in the Puget Sound demonstrate that the risk of larger vessels has materialized?

A: No. I provided a summary of the BPC's incident reports from 2005 to 2018 in my testimony in the prior rate case, and I have updated that with the BPC incident report data from 2019, 2020, and 2021 at Exhibit MM-35 and summarized it here in Figure R.

BPC Incident Analyses (2005-2018), (2019-2021)

TOTAL ANNUAL INCIDENTS		AVERAGE INCIDENTS PER YEAR	
2005-2018	63	2005-2018	6.5
2019-2021	3	2019-2021	1

INCIDENTS BY TONNAGE	
Avg Vessel Tonnage (2005-2018)	50,773
Avg Vessel Tonnage (2019-2021)	18,646

INCIDENTS BY LOA	
Avg Vessel LOA (2005-2018)	231.96
Avg Vessel LOA (2015-2018)	212.53

INCIDENTS BY VESSEL AGE	
Avg Vessel Age (2005-2018)	10.2
Avg Vessel Age (2019-2021)	13.7

FIGURE R

There have been no large vessels involved in major pilotage incidents in the Puget Sound at all during the past 3 years, which includes the time since the adoption of the current tariff in the prior rate case. In fact, 2 of the 3 incidents occurred with some of the smallest vessels by tonnage sailing under pilotage in the Puget Sound.

Q: Does this lack of major pilot accidents by any large vessels in the past several years track with the historical record of vessels moving under pilotage and in transit to and from ports in the Puget Sound?

A: Yes, two of the most significant accidents involving a piloted vessel in Puget Sound were a relatively small freighter and a tanker in Port Angles with a sizeable tonnage but nonetheless several times less tonnage than the largest tankers that have operated or that currently operate. Both resulted from pilot error: On June 11, 1978, a relatively small freighter of 550 feet, the

M/V Antonio Chavez, was rammed into the West Spokane Street Bridge, thereby closing it to automobile traffic for the next six years leading to the construction of a new higher bridge that vessels can sail under. And, on December 21, 1985, the tank vessel Arco Anchorage grounded while anchoring in Port Angeles leading to the largest marine oil spill in state history. For context, the largest tankers in world history are more than 4 times the tonnage of the Arco Anchorage. Fortunately, after many decades and hundreds of thousands of vessel transits, these two incidents remain arguably the most prominent cases of pilot error in the Puget Sound, even as vessels much larger than these have been plying our waters for years.

Q: Why do you believe that Puget Sound has had very few incidents in general, but also fewer incidents with larger vessels?

A: There are many factors to consider that have a bearing on vessel safety generally and vessel safety in the Puget Sound in particular. Our local geography is a benefit because we enjoy wide, deep and protected waterways, a vessel traffic separation scheme with traffic lanes, and a vessel traffic service as well as strong program like Port State Control which involves risk assessment even before a vessel is allowed to enter. Generally, as ships have gotten larger, the tools and technology for navigating and regulating these vessels have progressed as well. These improvements include enhanced navigation and communication tools like automatic identification systems on vessels, cleaner fuels enhancing fuel deliver to the engine(s), enhanced tug capabilities for escort and assist work, and a continuously improving Port State Control program designed to eliminate/reduce substandard ship operation meaning better crews and better maintained ships. So, although ships are bigger, and handling and maneuvering larger ships pose new and additional challenges and factors to consider when compared to smaller ships, large vessels are not inherently less safe.

Q: Was this an issue that was raised in the prior rate hearing as well?

A: Yes, I mentioned in my testimony that general industry trends enhance vessel safety and decrease risks to vessel safety over time (Exh. MM-01Tr at 85, TP-1900976):

> There is absolutely no debate on this question, the general industry trends of introduction of newer vessels, the leveraging of better designs, and use of rapidly improving technology in the maritime industry each contribute to continuously improved marine safety. Newer ship dynamics related to safety improvements include the increased use of AIS, GPS, ECDIS as enhancements, automation systems for engine control are more advanced (necessarily so due to more complex engine emission management), and propulsion systems are more efficient and responsive and include improvements in propeller design and type, and rudder design. All of these factors contribute to vessel based marine safety and risk management improvements as the industry reinvests in itself and its assets.

Likewise, improved navigational technology, such as the portable pilot units PSP has obtained and uses, allows for more informed decision-making during a transit. All these developments, from improved vessel design/construction to enhanced navigation tools to advances in technology used on vessels improve safety and decrease risk.

Q: Is there any update that you would like to provide in response to Capt. Stoller's testimony regarding the grounding of the *M/V EVER FORWARD* while under pilotage in the Chesapeake Bay on March 13, 2022?

A: Yes, Capt. Stoller's testimony at Exhibit MSS-01T 17:16-18:9 implies that there is not "just a coincidence" with three Evergreen vessels having incidents in one year. He points to the *M/V EVER FORWARD* grounding as if this is evidence that there is something inherently unsafe about the operation of ultra-large container vessels. It most certainly is not.

His reason for why he considers "a pilotage assignment involving one of these ULCVs to be a nightmare assignment," is because "[t]hese ships are so huge and so lacking in maneuverability in close quarters that the margin for safety is incredibly small. …The pilot has to be ready to anticipate so many different scenarios that extensive preparation is required and the stress level throughout the assignment is enormous."

This was, of course, pure speculation on the part of Capt. Stoller. At the time no one knew that this was not an accident resulting from the inherent challenge of vessel size. Rather, it involved a pilot being distracted by cell phone use during the transit.

The finding of pilot negligence in this case made absolutely no finding or mention either stating or inferring that vessel size had anything to do with the grounding. Instead, according to the Coast Guard Report of the Investigation into the EVER FORWARD Grounding (Exh. MM-36), the "Maryland Board of Pilots found Pilot 1's actions to be negligent and issued a Notice of Summary Suspension on October 21, 2022."

The Coast Guard agreed that the Pilot 1 acted in a negligent manner. The report did not identify vessel size as a causal or contributing factor in this grounding accident. Key findings listed in the report concluded that (at pg v, vi):

> As a result of its investigation, the U.S. Coast Guard determined that the initiating event for this casualty was the grounding. No mechanical issues or equipment failures contributed to this marine casualty. The causal factors that contributed to this casualty include: (1) failure to maintain situational awareness and attention while navigating, and (2) inadequate bridge resource management."
>
> …Pilot 1 also made a series of five phone calls amounting to over 60 minutes of time during the course of his outbound transit. He also sent two text messages and began drafting an email immediately before the grounding occurred…

Q: In light of the pilot's distracted cell phone use and finding of negligence that led to the M/V EVER FORWARD grounding, what conclusions should the Commission draw from Capt. Stoller's testimony regarding the risks associated with larger vessels?

A: First, vessel size is not the only risk factor that needs to be considered. Second, pilotage itself also poses risks to vessels. Lastly, it is not appropriate to speculate as to the causes or contributions to groundings, collisions or allisions without first having all of the facts of a case.

C. The regulatory structure for pilotage licensees and the administration of PSP's business remains virtually unchanged from the prior rate case.

Q: Have there been any significant changes in pilot licensing duties since the adoption of the current tariff in the prior rate case by the Commission?

A: No.

Q: Has the Washington State Legislature adopted any changes to the Pilotage Act since January 1, 2021?

A: No. The last major change to the Pilotage Act occurred in 2019, when the Legislature passed HB 1647 which codified the existing PSP practice of observing a 10-hour rest period. Exh. MM-37, Exh. HB 1647.

Q: Has the BPC made any regulatory adjustments since January 1, 2021?

A: Yes.

Q: Please describe the BPC's rulemaking in 2021.

A: This is well-summarized in a chart taken from the 2021 BPC Annual Report (Exh. JR-6):

Rulemaking

Hearing Date	Rule	Description
1/21/2021	363-116-078 Pilot Training Program Emergency Rule – 2nd Refile	To minimize the risk of introducing vectors of COVID-19 exposure onto a vessel or to pilot trainees, the BPC may suspend or adjust the pilot training program and may allow trainees to receive the maximum stipend during a training program suspension or adjustment.
3/18/2021	363-116-081 Rest Period	This new rule codified that pilots have a mandatory rest period of at least ten hours with the opportunity for eight hours of uninterrupted sleep after the completion of an assignment. In addition, this rule defines multiple assignments within a harbor area, and codifies and defines the existing practice of Puget Sound Pilots to receive a mandatory rest period after three consecutive night assignments.
5/25/2021	363-116-078 Pilot Training Program Emergency Rule – 3rd Refile	To minimize the risk of introducing vectors of COVID-19 exposure onto a vessel or to pilot trainees, the BPC may suspend or adjust the pilot training program and may allow trainees to receive the maximum stipend during a training program suspension or adjustment.
9/28/2021	363-116-078 Pilot Training Program Emergency Rule – 4th Refile	To minimize the risk of introducing vectors of COVID-19 exposure onto a vessel or to pilot trainees, the BPC may suspend or adjust the pilot training program and may allow trainees to receive the maximum stipend during a training program suspension or adjustment.

FIGURE S

Q: Please describe the BPC's rulemaking in 2022.

A: In 2022, the BPC engaged in the following rulemaking:

January 20, 2022 BPC Meeting

> Emergency Rule WAC 363-116-078 Due to COVID-19. The TEC agreed to recommend the Board re-file the Emergency Rule, which allows for a gradual return to pre-pandemic normalcy, and continues to require 12 trips per month to receive full stipend. The rule will be revisited in May 2022. Trainees are currently averaging at least 12 trips per month. Upon inquiry from Commissioner Hamilton, Commissioner Bendixen

explained that pre-pandemic the number of trips necessary to receive full stipend was 18. That number was set prior to rest rule legislation and implementation and hasn't been reviewed in several years. Starting last summer, the TEC looked at how the rest rules would affect the number of trips. The TEC proposed a reduction in required trips from 18 to 14 based on rest rules and current vessel traffic, which will go into effect when the emergency rule lifts and upon action by the Board to codify the change. Motion: Bendixen/Farrell – refile the Emergency Rule WAC 363-116-078 as proposed by the TEC – Carried.

February 17, 2022

Rulemaking WAC 363-116-081 Rest Period. The Pilot Safety Committee (PSC) will be introducing to the Board recommendations for changes to WAC 363-116-081 at the next BPC meeting. The rule would allow for multiple revenue producing assignments, as long as they are within a 13-hour window of time. The Board reviewed the Rulemaking Distribution Notice and draft CR101 provided in their meeting materials. The CR101 will be filed tomorrow. Following the standard rulemaking process, the rule would be in place sometime in June.

July 19, 2022

ESHB 1578 Updates. Ecology held a webinar on July 8 as a continuation of the ERTV and Tug Escort Analysis Projects outreach. For those who missed it, all the webinars relating to the risk model are housed on Ecology's website. The model testing will start next week and will be continuing all summer with next steps coming this Fall.

August 16, 2022 BPC Meeting

Proposed Rulemaking: WAC 363-116-082 Limitations on new pilots. The TEC has started the process of reviewing all the training WACs, starting with 363-116-082 Limitations on new pilots. The recommendations from the TEC include WAC changes to allow the TEC more flexibility in prescribing upgrade trips and to better align the WAC with current practices in Grays Harbor, revising the language to reflect an upgrade process similar to the Puget Sound process. A public hearing will be scheduled for the October Board meeting. Chair Tonn asked for public comment and received none. Motion: Bendixen/Drennen – approve the filing of the CR 102 for WAC 363-116-082 incorporating the proposed redline changes – Carried.

October 22, 2022 BPC Meeting Rulemaking:

ESHB 1578 Rulemaking Presentation – Department of Ecology. Katie Wolt, Agency Rule Coordinator with the Department of Ecology, presented the regulatory framework for rulemaking at Ecology and discussed the complexities of the rulemaking process. The Board will be following Ecology's framework with their assistance for the rulemaking directed by ESHB 1578 regarding tug escorts.

Consideration of Previous Hearing on WAC 363-116-082: Limitations on New Pilots. Motion: Bendixen/Ross – adopt the changes to WAC 363-116-082 Limitations on New Pilots as proposed – Carried.

Q: Have any of these rule changes substantially impacted or altered any of the duties of licensed pilots or otherwise changed the manner in which pilots perform their jobs?

A: No. The rulemaking primarily focused on issues with COVID-19, training and trainees, and minor revisions and codifications to sections that allow pilots to complete multiple revenue producing assignments under certain circumstances. For instance, the rest period rules adopted in 2021 did not materially change pilot rest rules as it was a further codification to reflect the statutory changes enacted in 2019, which were in and of themselves, essentially a codification of existing PSP policies and statutory law regarding adequate rest for pilots.

Q: What is the significance of a stable regulatory environment for pilot licensees?

A: There is no compelling basis for a claim that the fundamental aspects of pilotage have materially changed.

D. After an unprecedented drop in total pilot assignments due to the pandemic in 2020, total annual pilot assignments in 2021 and 2022 returned to historical norms.

Q: Have total pilot assignments recovered to a regular range since the adoption of the current tariff in the prior rate case?

A: Yes. As shown in Figure T, Exhibit MM-38, Total Pilot Assignments recovered from the pandemic in 2021 and by 2022 returned to historical norms.

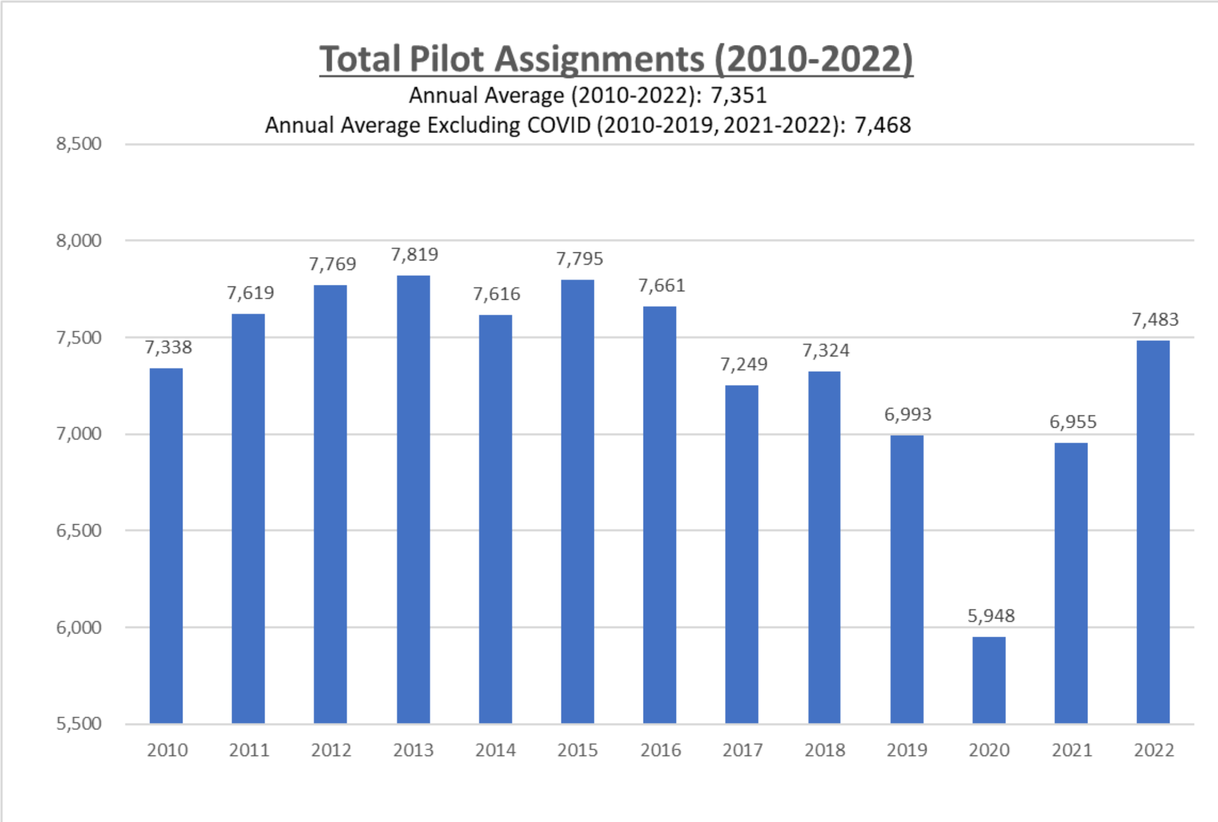


FIGURE T

In 2020, with the onset of COVID-19, the unmistakable impact of the pandemic on global trade severely depressed the total annual number of pilot assignments with a swiftness and severity that was as shocking as it was unprecedented. Thankfully, that shock was short-lived due to the recovery of global demand growing as the world economy recovered and adjusted to a post-pandemic reality. Vessel traffic has since returned to a normal range.

Q: How would you describe a normal range and why total annual pilot assignments are back within that range?

A: A normal range of traffic from the 10 years before COVID, 2010-2019, included assignments from a low of 6,993 in 2019 to a high of 7,819 in 2013. The annual average number of assignments per year was 7,518.

Excluding the COVID impact anomaly year, but taking an annual average of all years 2010-2019 and 2021-2022, the annual average pilot assignment level is 7,468 per year. In 2022, the total assignment level of 7,483 is actually the single closest year to this average of any year since 2010. In other words, 2022 assignment levels have recovered to normal.

Q: What is the significance of total pilot assignments having returned to a normal range and average in 2021 and 2022?

A: There is no compelling basis for a claim that the capacity of the pilotage system is strained, or that demand for pilotage is excessive. Pilotage in 2022 was clearly average and within a range of normalcy after a short period of unprecedented decline.

Q: Is it possible that this recovery is only a short-term trend and that we should be cognizant of the long-term downward trends in non-cruise vessels calling on Puget Sound ports that characterized the years heading into COVID?

A: Yes, because COVID has such a disruptive event worldwide, and global trade is now hitting some recessionary headwinds, there are tremendous variables involved and that may manifest multiple paths forward for pilot assignments in future years. On the one hand, the two years immediately after COVID and the two years immediately before COVID are nearly mirror images, with 2022's 7,483 assignments slightly higher than 2018's assignment level of 7,324, while 2021's 6,955 assignments are slightly lower than 2019's level of 6,993 assignments. One might expect that these establish a new lower plateau of demand that, excepting 2020, looks fairly stable from 2017 to 2022. On the other hand, it is entirely possible that 2022 will prove to be the anomalous year, driven by the pandemic global trade boom and its excessive demand. In that case one could anticipate a repeat of the downward trend that occurred from 2015 to 2019 , which saw an overall decline of over 10% in vessel volumes. It is impossible to say at this early stage of 2023 in which of these two directions vessel assignment trends will turn. But it is fair to say that no one in the industry expects a sustained increase in vessel traffic in the near term as peak congestion and demand has dramatically declined.

Q: In a period of uncertainty such as you have described here, what would be the most prudent approach to vessel traffic projections for the Commission?

A: The Commission should be conservative in its approach because the Pilotage Act, in addition to providing for the maintenance of efficient and competent pilotage service, directs the creation of a regulatory system that values competitiveness and the economic value created by trade and maintaining the state of Washington's place on the world economic stage and access to global markets.

E. The effectiveness of PSP efficiency measures adopted in response to Commission findings in the prior rate case remains unknown and unquantified.

1. The Commission recommended that PSP implement efficiency improvements and adopted a two-year rate plan in part to give PSP time to do so.

Q: Did the Commission address questions in the prior rate case regarding pilot efficiency in light of the testimony provided by stakeholders?

A: Yes, the Commission deliberated and opined on the question of efficiency quite specifically at ¶¶ 106-109 of the Final Order in TP-190976.

Q: Please summarize the Commission's Order regarding efficiency from these sections.

A: At ¶ 106 the Commission was explicit about its decision to not dictate efficiency measures to PSP and concluded that efficiency was ultimately a responsibility of PSP, with the incentive as the opportunity to earn more revenue with wise and efficient management:

> Because we are not charged with regulating the safety of marine pilotage or determining the number of authorized pilots, we must decline to resolve the parties' disputes regarding the efficiency of PSP's dispatch system, the appropriate TAL for pilots, and other workload issues. Again, the purpose of economic regulation is to promote efficiency rather than to direct internal management decisions. By setting the revenue requirement, the Commission is providing PSP "an *opportunity*, given wise and efficient management, to earn that return." In this case, we share PMSA's concerns that it is difficult to evaluate the efficiency of PSP's management of its workload and that PSP may be missing opportunities to provide incentives for pilots to accept assignments. Yet we consider these issues through our lens as an economic regulator. It is ultimately PSP's

> responsibility to make prudent management decisions to earn the revenue requirement authorized by the rates the Commission sets.

At ¶ 107 the Commission cited the “inconsistent and unclear” dispatching data and facts alleged by PSP as a basis for its conclusion that it could not be assured that PSP manages pilot dispatch efficiently. And, at ¶ 108 and ¶ 109 respectively, the Commission “observed that PSP does not use its compensation system to encourage pilots to maximize their availability while on watch, or to take callback assignments” and that “PSP has missed any opportunity to motivate pilots through compensation by structuring its organization so that pilots earn the same income regardless of how much or how little they work.”

The Commission’s review concluded in ¶ 109 by acknowledging these existing efficiency concerns and a “recommend[ation] that PSP retain an outside consultant to study its organizational efficiency. Although it is not our role to direct internal management decisions, we offer this suggestion for PSP’s consideration.” The Commission further added that “[a]n outside consultant may identify areas where PSP could maximize its ability to earn the revenue requirement authorized by the Commission.”

Q: How was this deliberation built into the tariff decision by the Commission?

A: At ¶ 103, the Commission explained that its adoption of “a two-year rate plan also provides PSP with an opportunity to increase its organizational efficiency, an important characteristic of well-run regulated utilities. As discussed below, we are concerned that PSP (1) does not efficiently distribute its workload, (2) presents its workload data in an inconsistent manner, and (3) pays its pilots equally despite significant disparities in pilot workloads."

And, further, the Commission described that its "decision to implement a two-year rate plan thus reflects our expectation that PSP will create efficiencies to better use its current pilot staffing level."

2. PSP's consideration and implementation of efficiency measures are only partially responsive to the Commission's recommendations because they do not address economic incentives or barriers to efficiency.

Q: Has PSP implemented any efficiency measures as a result of the Commission's recommendations?

A: According to the testimony provided by PSP in this rate case and in other updates provided to the BPC, PSP adopted (by pilot vote) six efficiency measures in 2021 (Exh. IC-01T 13) and a new watch schedule in 2022 (Exh. IC-01T 14) to address the Commission's recommendations..

Q: Did any of the six efficiency measures address the economic efficiency concerns of the Commission at ¶¶ 103, 108-109 regarding the use of the compensation system to encourage pilots to maximize their availability while on watch, or to take callback assignments and identify opportunities to motivate pilots through compensation to become more efficient?

A: No.

Q: Does the new watchkeeping schedule address any of the economic efficiency concerns of the Commission at ¶¶ 103, 108-109 regarding the use of the compensation system to encourage pilots to maximize their availability while on watch, or to take callback assignments and identify opportunities to motivate pilots through compensation to become more efficient?

A: No.

Q: Did PSP hire an outside consultant to assist with the efficiency issues as recommended by the Commission?

A: PSP has disclosed that it has utilized three different outside consultants in response to the recommendation: a consulting arrangement with Dr. Czeisler and the Brigham and Women's Physicians Organization (BWPO) Hospital Division of Sleep and Circadian Disorders to produce a report with efficiency recommendations; a software package upgrade with its dispatch software vendor, Coe & Co, in order to give PSP the capability to analyze the effectiveness of its efficiency measures; and, consulting support from PSP's former Executive Director Mr. Tabler.

Q: To the best of your knowledge do any of these consulting agreements address the Commission's concerns at ¶¶ 103, 108-109 regarding the use of the compensation system to encourage pilots to maximize their availability while on watch, or to take callback assignments and identify opportunities to motivate pilots through compensation to become more efficient?

A: No.

Q: What activities are to be assessed in the scope of Dr. Czeisler/BWPO's consulting arrangement with PSP?

A: "The BWPO will assess the operational efficiency of the use of each PSP Member Pilot and across all PSP Member Pilots, by examining appropriate operational efficiency metrics, including the types of activities, the number of days worked, the number of callbacks, the number of compensation days accrued, the number of vessels moved, and the number of multiple harbor shifts. The BWPO will use modeling, as appropriate, to explore alternative scheduling practices (e.g., staggering start days) that may improve efficiency without increasing operational risk." Exh. MM-39 (PMSA DR 32 Response (PSP000399)).

Q: Does this consulting arrangement with PSP require a final report?

A: Yes. BWPO is to "prepare and deliver a final presentation of the information on operational efficiency" and to "prepare and deliver a comprehensive final report to the PSP President." Exh. MM-39.

Q: Did PSP present a copy of this presentation or Report in its testimony?

A: No.

Q: Did PSP present a copy of this presentation or Report in response to Data Requests by PMSA?

A: Yes. A copy of the "Evaluation of Puget Sound Pilots' Scheduling Efficiency and Recommendations for Improvement: Final Report" from June 1, 2022, is included here as Exhibit MM-40 (PMSA DR 48 Response (PSP 000405-000413)).

Q: Does Dr. Czeisler/BWPO's contract scope or Final Report address any of the economic efficiency concerns of the Commission at ¶¶ 103, 108-109 regarding the use of the compensation system to encourage pilots to maximize their availability while on watch, or to take callback assignments and identify opportunities to motivate pilots through compensation to become more efficient?

A: No.

3. PSP has not disclosed the underlying research data or models used in the development of its suite of adopted efficiency measures.

Q: As you noted above, the consulting arrangement with PSP required Dr. Czeisler/BWPO to base his analysis on "appropriate operational efficiency metrics, including the types of activities, the number of days worked, the number of callbacks, the number of compensation days accrued, the number of vessels moved, and the number of multiple harbor shifts" and to "use modeling, as appropriate, to explore alternative scheduling practices (e.g., staggering start days) that may improve efficiency without increasing operational risk." Did PSP present a copy of the database of metrics used?

A: No.

Q: Did PSP present a copy of the modeling or access to the underlying model used by BWPO?

A: No.

Q: Did PMSA request this information from PSP?

A: Yes, on October 7, 2022. Exh. MM-41 (PMSA DR 36).

Q: Has PSP disclosed the underlying metrics and models used by BWPO?

A: No. The response from PSP was that "[t]he databases prepared by BWPO have been requested and will be provided upon receipt." Exh. MM-41 (Response to PMSA DR 36).

Q: How long has PMSA been waiting for a responsive production of the assessment data and model used by BWPO?

A: It has now been 126 days since our request. Despite numerous follow-up requests and PSP's, we have received nothing.

Q: Did you review PSP's testimony regarding its Efficiency Committee's activities in furtherance of its consultants efficiency recommendations to "examine [PSP's] dispatch system, use of callbacks, level of on watch efficiency, use of meetings, etc."?

A: Yes, that is in the testimony of Capt. Carlson. Exh. IC-1T 11:23-12:2.

Q: Did Capt. Carlson or PSP present any of the reports or documents used by the PSP Efficiency Committee in the assessment of PSP operational efficiency in its testimony?

A: No.

Q: Did PMSA request copies of the reports and data used by the PSP Efficiency Committee to make its recommendations regarding the efficiency measures?

A: Yes. Exh. MM-42 (PMSA DR 30).

Q: Has PSP disclosed the reports and data used by the PSP Efficiency Committee?

A: No. PSP objected repeatedly to disclosing this based on a "self-critical analysis privilege" (Exh. MM-43, Supplemental Responses to PMSA DRs). PSP released only the votes and survey results that were the end-product of the work by the PSP Efficiency Committee, not the information underlying the development of the efficiency measures placed before the pilots for their vote or of any efficiency measures considered but not adopted. Exh. MM-43 (Supplemental Response to PMSA DR 30.)

Q: In your opinion, is it possible to evaluate the adequacy or effectiveness of the efficiency measures proposed by Dr. Czeisler/BWPO without access to the initial assessment data that they relied on or the models that they used?

A: No.

Q: In your opinion, is it possible to evaluate the adequacy or effectiveness of the ultimate efficiency measures agreed to by the PSP Efficiency Committee without access to the reports and data that they relied upon in making their recommendations?

A: No.

Q: In its petition, has PSP addressed the concerns expressed by the Commission at ¶ 107 regarding inconsistent and unclear sets of dispatching information and data?

A: No, and it is functionally impossible to test and evaluate the consistency and adequacy of the datasets that were used here because they were never provided in response to our inquiries.

Q: In evaluating these issues, is it important to make sure everyone is working off of the same datasets?

A: Yes, as we all experienced in the prior rate case, when multiple parties are using multiple sets of data and modeling different numbers for different purposes, it is hard to affirmatively validate any data, much less any analysis or modeling built around that data. The Commission's finding and comments at ¶ 107 regarding inconsistent and unclear sets of dispatching information and data resulted precisely from this scenario.

Q: Which party in this proceeding is responsible for clear and accurate accounting of pilot assignment and dispatching data?

A: PSP is responsible for this out of necessity because it is the only party with this information: PSP has the dispatching data, the assignment data, and the duty, rest and callback day schedules. It is also incumbent on PSP to make its case and to address the issues previously identified by the Commission.

4. PSP has not presented any analysis regarding the results or impacts of its implementation of efficiency measures.

Q: What was PSP's announced expectation of improvements on the adoption of its efficiency measures?

A: PSP set no expectation for the six efficiency measures, but Capt. Carlson has stated that the change in watch rotation schedule "will reduce the need for callbacks by as much as 40% in any given month." (Exh. IC-01T 14:12-14)

Q: Has PSP disclosed or provided any metrics or data to support this claim or to otherwise demonstrate the efficiency measures' effectiveness?

A: No, neither in the context of this case nor to the Board of Pilotage Commissioners.

Q: Has the Board of Pilotage Commissioners asked for a report on the effectiveness of the efficiency measures?

A: Yes, multiple times. The BPC is planning on scheduling a meeting to evaluate the pilot efficiency measures' impacts when it has data to analyze. PSP originally stated it would provide the report in Fall of 2022, which became December 2022 and then January 2023, and now has been pushed back again to February 2023. Not BPC is planning a workshop on this in

March. It has now been 10 months after reportedly beginning to implement a suite of efficiency measures, and PSP has not provided complete updates or statistics.

Q: Why is PSP's failure to respond to BPC's ongoing efforts to evaluate this data important for this Commission?

A: The Commission has shown an appropriate sensitivity to the separate jurisdictions of the UTC and BPC, with BPC's role in setting the number of pilots necessary for safe and efficient pilotage services. PSP's arguments for efficiency improvements in this regard implicate this delicate relationship between the UTC and BPC. Analysis of how many pilots are working on what shifts and with what rest fall more within the BPC's purview in determining a proper number of licensees or adjusting the Target Assignment Level. It is less concerned with the UTC's purview in setting a tariff based on a historic Average Assignment Level. If the arguments for these efficiency measures were based on economic incentives and the revenue per assignment, then those would have been more suited to helping the UTC, but the PSP efficiency measures studiously avoided addressing any such issues.

Q: In your opinion, is it possible to evaluate the adequacy or effectiveness of the ultimate efficiency measures before this Commission or the BPC without all the key performance metrics or data to evaluate dispatching and scheduling?

A: No.

Q: What are the types of metrics and data critical to evaluating the effectiveness of these efficiency measures?

A: PSP should provide data revealing the number and type of assignments each day compared to how many pilots are on duty each day, how many on-duty pilots are actually available each day, and if pilots are not available then list the reasons for their unavailability. This supply/demand picture will logically shed light on causes of delays and need for callbacks and will identify to better manage pilot availability to match demand and improve efficiency. This daily picture would better explain why daily assignment averages that are typically between 18 and 23 jobs per day are stressing a pilot corps with a capacity of over 50 pilots. You can't manage what you don't measure.

Q: Has PMSA offered suggestions at the Board of Pilotage Commissioners on efficiency improvements and changes that PSP can employ?

A: Yes, for example, a recent PMSA letter to the BPC (Exh. MM-44) summarized suggestions PMSA has made over the years to improve PSP efficiency, including the following:

- Pilot Ordering
    - Expand ordering hours
    - Watch System Adjustments to better match available rested pilots to demand
    - Move to multiple watches with more transition days
    - Reduce transition time from 24 hours (full day of duty) to perhaps 8 hours or less

    - Set transition days on busiest days of the week
- Dispatch
    - Bunch short assignments to minimize travel/prep and ability to safely perform multiple assignments in one day
    - Assign pilots geographically closer to shifts or emergency repositioning or assignments that would otherwise require additional rest or multiple pilots
    - Facilitate pilots trading duty days so long as they comply with rest rules
    - Use forecast metrics to optimize repositioning and assignment planning by individual pilots – include use of inbound vessels tracking from sea/BC (dispatch log)
    - Use forecast metrics to maximize use of outbound assignments as the repositioning at PA for an inbound assignment
- Call backs and comp days
    - Change internal rules to ensure a more even distribution of assignments; having a range from 90 to over 220 is not efficient
    - Change the revenue distribution rules to reward those safely doing more work or set standards that require taking a certain number of call backs over the course of a year
    - Those falling behind productivity of the average pilot would not having ongoing ability to refuse call backs without safety or other serious considerations
    - Manage comp day accumulation and use to minimize impacts to service

- Management of vacation, meetings, training, medical or other activities that remove pilots from being available to pilot
    - Adjust ETO due to less duty time on transition days
    - Minimize use and/or bunching of ETO/vacation during busy periods
    - Minimize training during duty weeks that cause delays or call backs
    - Maximize Executive Director representing PSP at various meetings rather than pilots
    - Use the President or designated other pilot only when pilot's navigational expertise is needed, not for routine business
    - Maximize use of remote meeting options commonly used now (Teams, Zoom, etc.) and minimize use of on duty pilots for meetings.
    - Adjust watch to avoid potential bunching of NFFD pilots on same duty rotation,

Q: What is the value to ratepayers of improved PSP efficiency?

A: Improved efficiency by PSP should result in better and more reliable customer service, a minimization of delays caused by an unavailable pilot, and should create relief for PSP internally to reduce the use of callbacks. On this last point, we would be very pleased if just a simple shift in the pilots' rotation resulted in the 40% reduction in the historical average number of callbacks as predicted by PSP. But without the availability of key efficiency performance metrics to analyze, there is no way to know.

Q: What do we know about PSP dispatching and rotational outcomes during 2022?

A: While claiming to be reducing inefficiencies and reducing the need for callbacks, PSP's customer service, delay and reliability problems have remained elevated at record levels since July 2021. As I detailed above regarding delays, this is not an improvement in efficiency. This reaffirms the need for comprehensive reviews of key metrics to evaluate PSP's efficiency measures. For example, if the only metric is reduction in callbacks, someone might superficially claim an efficiency victory without realizing that those callback reductions came at the expense of delays and a degradation of customer service. That is most certainly not the intended outcome of the Commission's recommendations.

Q: How should the Commission address this issue?

A: A tariff increase based on efficiency improvements is unjustified. The Commission explicitly gave PSP additional time to address efficiency by passing a two-year tariff. It recommended PSP seek professional assistance for three areas of concern: (1) that PSP does not efficiently distribute its workload, (2) that PSP presents its workload data in an inconsistent manner, and (3) that PSP pays its pilots equally despite significant workload disparities.

Despite having had two years to address the issue, PSP cannot adequately address these three concerns:

(1) Without reports and analysis of key data, it is impossible to ascertain whether PSP has made any significant progress on more efficiently distributing its workload. In the meantime, we remain concerned by

PSP's inability to find a way to manage more than 50 pilots so that they provide adequate coverage of an average of just over 20 assignments per day. This management failure is evidenced by the record number of delays, leaving us to conclude anecdotally that, while it is certainly possible that there are efficiencies PSP may have gained, they are not translating into better reliability or customer service and may be coming at the expense of vessel delays.

(2) PSP has presented no analytical or statistical data with respect to the foundational data and analyses that led to the efficiency measures adopted, and PSP continues to postpone disclosure of key data or reports to the BPC on their outcomes. The inability or refusal to produce key workload data is not a demonstration that PSP has solved and addressed its workload data issues.

(3) Nothing done by PSP in the last two years has addressed the question of ongoing wide discrepancies in pilot workloads that are not reflected in their compensation.

F. PSP provides the same services to vessel customers independently of market conditions that impact international trade, the COVID pandemic, and the profits or losses associated with the global operations of various vessel types.

Q: Does PMSA agree with the Commission's conclusion in the prior rate case that "the profitability of larger vessels should not justify imposing greater costs on those vessels" (TP-190976, Order 09, ¶ 362)?

A: Yes.

Q: Does PMSA agree with the Commission's further conclusion (Order ¶ 362) that imposing additional costs on customers based on profitability would be improper "because doing so 'goes against one of the core principles in regulated rate setting,'" and "[i]t is instead appropriate to charge vessels based on the principle of cost causation"?

A: Yes, absolutely. Setting rates based on the profitability of the customers of a monopoly, like PSP in the current rate case, is against public policy and the principle of cost causation.

Q: Should the Commission stand by this principle?

A: Yes, despite the numerous attempts by PSP in its testimony to make the profitability of certain segments of its customer base an issue in this case, this principle remains sound.

Q: Do PSP's various assertions of vessel profitability in this case focus exclusively on the global profit levels of large companies with container shipping operations?

A: Yes.

Q: Does PSP discuss the profitability or losses of bulk carriers?

A: No.

Q: Does PSP discuss the profitability or losses of cruise vessels?

A: No.

Q: Does PSP discuss the profitability or losses of general cargo vessels?

A: No.

Q: Does PSP discuss the profitability or losses of tankers?

A: No.

Q: Does PSP discuss the profitability or losses of roll-on/roll-off vessels?

A: No.

Q: Does PSP discuss the profitability or losses of refrigerated vessels?

A: No.

Q: Does PSP attempt to explain why or how profitability or losses would apply to any type of vessel that calls on Puget Sound simply to refuel or for maintenance or repairs or to wait for the next charter or hire to move cargo?

A: No.

Q: Does PSP explain why its testimony discusses the profitability of only a small number of companies in one of their vessel customer categories but ignores market conditions for the rest of its customers?

A: No.

Q: Can PSP analyze its customers' profitability accurately if it does not analyze the profitability of all its customers' industry segments?

A: No.

Q: Does the profitability or loss of a carrier change the service provided by a pilot or materially change the way in which pilotage service is provided and fully paid for?

A: No.

Q: Does PSP attempt to reconcile its testimony regarding container vessel profitability during the past two years within a historical context of the container shipping industry's profits and losses?

A: No. PSP and its experts presented an exceptionally narrow view of the context of the temporal disruptions to the ocean shipping market caused by the unprecedented economic shifts in domestic consumption patterns during the pandemic.

Q: What would a longer-term view of the market reveal?

A: As discussed in a recent World Shipping Council white paper, the spike in global freight rates was a direct result of sudden and unexpected global cargo demand surge, and as a result, "[t]here is no doubt that the surge in demand has increased ocean carrier revenues. However, prior to Q2 2020 ocean carriers had operating margins of 5% or more for only 6 of 49 quarters or just 12% of the time in 12 years." Exh. MM-45, at 24. This history of limited profitability, and the truly anomalous nature of the 2020-2021 pandemic-induced cargo surge and its impacts on revenues, are best demonstrated by this chart from the same report (Figure U):

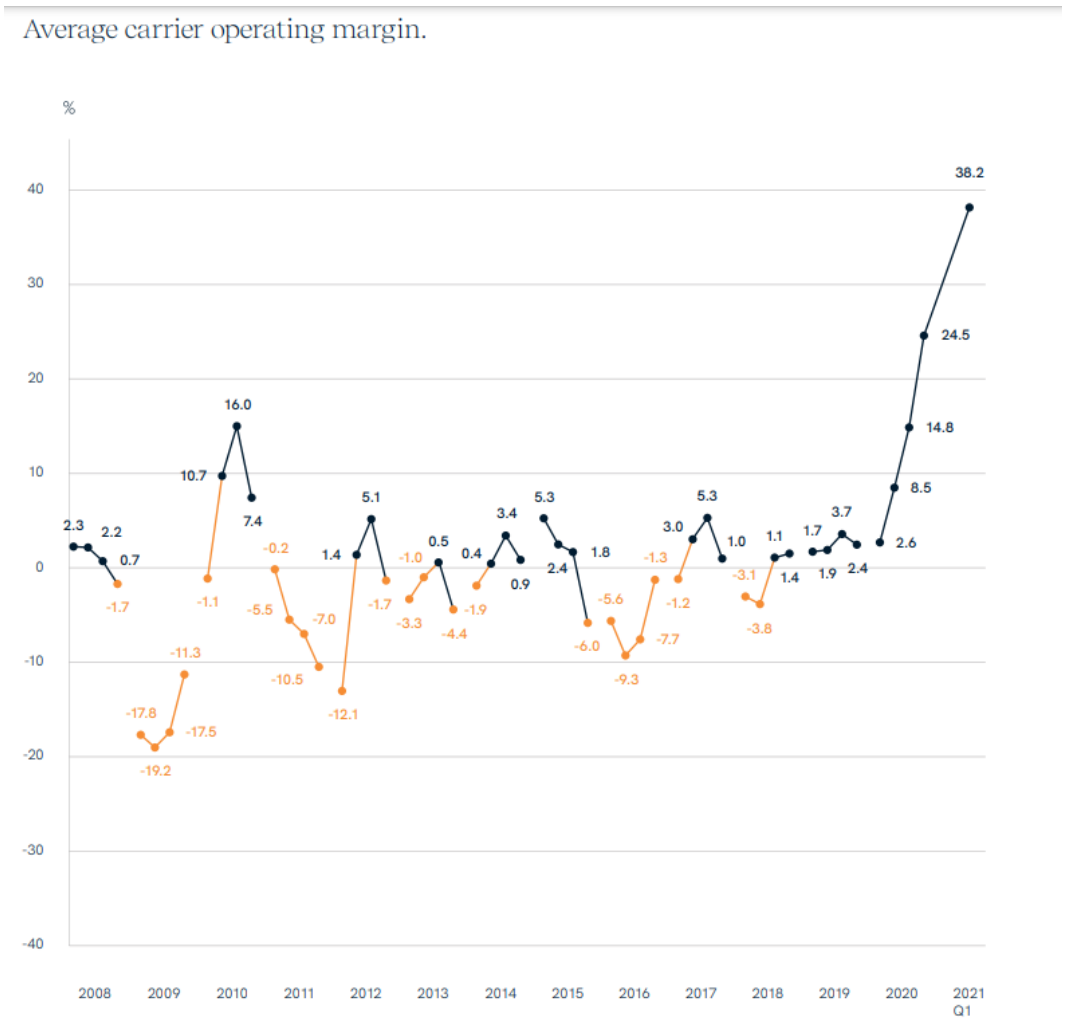


FIGURE U

Q: What is the implication of including this historical context to the PSP argument that they believe container vessel profitability is relevant to this rate case?

A: If PSP honestly believes that the profits of their customers are relevant to their rate-setting, then they must also believe that the losses of their customers are relevant to the rate-setting. That would mean that over the past decade rates for pilots would have been decreasing worldwide as container carrier operating margins shrank and were negative for many years. But they have not. And, because profits and losses have nothing to do with the provision of pilotage services, they should not.

Q: Under the current tariff, how could PSP advocate for market-based tariff increases based on container carrier profitability while not analyzing or discussing how that would impact other customers of theirs who were impacted by the COVID pandemic in the opposite way?

A: It is impossible for PSP to segregate out their customers based on profitability without being discriminatory in the application of their tariff, so it seems they've just conveniently ignored this issue. While container carrier vessels were benefitting from the unprecedented surge in cargo demand driven by a shift in global consumer spending patterns to goods and away from travel and services, the cruise industry was being decimated by COVID, laying up ships, taking huge annual losses, and sitting idly by as the leisure travel economy came to a virtual standstill. Because most of the very largest tonnage vessels calling on Puget Sound are cruise ships, the vessels that would end up paying the most if the PSP Petition were to be approved would be the very passenger vessels that lost the most business, the most customers, and the most money during the COVID crisis when compared to every other vessel class moving goods. This is clearly unfair if the justification by PSP for a rate increase is based on customer profitability. Neither the skill level or time of the pilot on the vessel change whether the vessels is making a profit or a loss.

Q: Does PSP also allege that somehow during the pandemic that the ocean carriers became anti-competitive and that their competitiveness is somehow relevant to this rate case?

A: Yes. And I am struck by the irony of a monopolyasking for even higher prices because it is concerned about a purported lack of competition in one segment of its customer base.

Q: Is it true that the markets for global shipping during the pandemic saw unprecedented rate increases as a result of industry concentration?

A: No. A recently completed investigation on “Effects of the Covid-19 Pandemic on the US International Ocean Supply Chain” by the Federal Maritime Commission (Exh. MM-46) concluded otherwise. The FMC is the federal agency tasked with regulating the ocean carrier marketplace, and while it did identify many issues including some violations of the Shipping Act as a result of the pandemic, these were primarily regarding terminal and carrier equipment and availability of vessel and terminal space and how to enforce detention and demurrage disputes, not competition. Most of the domestic billing and equipment rules in question have now been reformed by

Congress and subject to FMC rulemaking and implementation, They have no bearing on pilotage. Finally, the FMC "Effects" Investigation affirmatively addressed claims, such as those forwarded by PSP here, regarding competition in its Market Analysis, which concluded that "the transpacific is a highly contestable market," as follows (Exh. MM-46, at 44):

3. Market Analysis

Though there have been charges of illegal activity or concerns of market concentration driving increased ocean freight costs, the Fact Finding Officer's assessment is that our transpacific market is not concentrated and that the increased rates in that market are a result of an extreme spike of consumer demand in the United States that overwhelmed the supply of ship capacity. Similarly, the U.S. Atlantic market for ocean shipping is barely concentrated, and increased rates in that market are also a result of overwhelming U.S. demand.[71] Furthermore, a reassuring data trend indicates that the individual ocean carriers within each alliance continue to compete on pricing and marketing independently and vigorously. Individual ocean carriers within alliances continue to add and withdraw vessels from trades both inside and outside the alliances in which they participate and, particularly in the transpacific, new entrants have been entering the trade. The transpacific is a highly contestable market.

Using the Herfindahl–Hirschman Index (HHI) the Commission's Bureau of Trade Analysis has found that the transpacific markets are competitive and have been for some time. In fact, moving beyond HHI, the fact that the non-alliance share in the transpacific increased throughout 2021 provides further evidence of competition in that market. The transatlantic numbers are slightly higher in terms of HHI, indicating a moderately concentrated market over the past year, but is at the very bottom of that range.

FIGURE V

Q: Has PSP presented any testimony that demonstrates any connection between pilotage and the FMC's regulation of vessel charges or detention and demurrage rules?

A: No, the job of piloting vessels when they arrive at the Puget Sound to do business remains the same regardless of the commercial relationships between ocean carriers and their customers or their alliance partners and how those commercial agreements are regulated by the FMC.

Q: Has PSP presented any testimony that demonstrates any connection between pilotage and ocean carrier profitability?

A: No, the job of piloting vessels when they arrive at the Puget Sound to do business remains the same regardless of the profits or the losses of the individual vessels, the profits or the losses of the owners of the vessels, or the profits or the losses of the ocean carriers chartering, leasing, operating, or owning the vessels as part of a global fleet.

Q: Has PSP presented any testimony that shows that any of these commercial issues, including regulation of the marketplace by the FMC, contributes to an analysis of pilot expenses, DNI, or the number of pilots?

A: No.

G. The Commission must remain mindful of the policy goals of the State of Washington to maintain the competitiveness of our seaports.

Q: Does the Pilotage Act require that the pilotage system maintain a pilotage system which enhances the competitiveness of the State of Washington in maritime trade?

A: Yes. RCW 88.16.005.

Q: Does PMSA agree with the conclusions of PSP that "the pilotage fees proposed by PSP are completely insignificant to…ocean carriers" (Exh. KAE-01T 41:1-2)?

A: We most emphatically disagree with this assertion.

Q: Does PMSA have an opinion about the breadth and depth of the analysis done by PSP when arriving at this conclusion in its testimony?

A: Yes, it is short and conclusory. It presents no analysis whatsoever. And, its reliance on *Maritime Economics* by Mr. Martin Stopford is misplaced for this conclusion.

Q: Are you aware of any recent studies which present comprehensive, well-researched, and documented conclusions with respect to competitiveness for Washington's ports and trade forecasts?

A: Yes. The "2017 Marine Cargo Forecast and Rail Capacity Analysis, Final Report," August 2017 prepared for the Freight Mobility Strategic

Investment Board of the State of Washington and the Washington Public Ports Association is attached here as Exhibit MM-47.

Q: Does this cargo forecast touch on competitiveness issues and if so what does it say?

A: Yes, and while the report is extensive and comprehensive, making it hard to summarize concisely with just a few citations, consider the following from the Executive Summary, pages ES-II and ES-IV, respectively:

> **Containers face stiff competition.** International container traffic peaked in 2007 then fell sharply during the Great Recession. Volumes have since recovered some of the lost ground, but competing ports in British Columbia have gained market share at our expense. International container volumes are projected to grow, but the rate of growth will depend on the ability of local ports to compete with other regions. Growth in domestic containers (i.e. Alaska and Hawaii) is likely to be slow.

> Our ability to cultivate new opportunities will depend on the investments made today and tomorrow. Much of the cargo received at Washington ports is discretionary, and can move through alternative gateways; in order to preserve the shipping options available local producers, we must compete aggressively to preserve and expand access to trade routes.
>
> Competition is especially fierce from ports in Southern California and British Columbia, as well as ports on the East and Gulf Coast. Southern California is especially attractive to shippers due to its large population base, and British Columbia has been able to offer a low-cost alternative to ports in the Pacific Northwest.

FIGURE W

Q: Since the publication of this report in 2017, have these conditions significantly changed such that one could conclude that competition for container traffic, in particular, has become less intense or that admonitions to be mindful of "a low-cost alternative to ports in the Pacific Northwest" could be ignored?

A: No, if anything the situation has become more acute and troubling, making competitiveness more important than ever.

Q: On what basis?

A: Washington's container ports are losing both total volume and losing market share by volume. PMSA routinely monitors West Coast trade volumes and market share generally. This is a broad body of information and research that is available online at our archive for West Coast Trade Reports. https://www.pmsaship.com/trade-reports/. But, with specificity to the cargo moving via container through the Ports of Seattle and Tacoma, the recently published "Northwest Seaport Alliance 5-Year Cargo Volume History," attached here as Exhibit MM-48, tells the story clearly. Overall, the number of total containers moving through the Northwest Seaport Alliance ports slid from 3.7 million TEUs in 2017 to 3.3 million as of the end of 2022. This last year, containers moving through Washington ports declined 9.4%, and tonnage of container cargo has declined approximately 20% from a high of 28.8 million metric tons in 2018 to just over 23 million metric tons in 2022. See Figure X below:

THE NORTHWEST
SEAPORT ALLIANCE

The Northwest Seaport Alliance 5-Year Cargo Volume History:

CONTAINERIZED VOLUME (TEUs)	2017	2018	2019	2020	2021	Dec 21 YTD	Dec 22 YTD	% Change Y-O-Y
Int'l Import full TEUs	1,380,785	1,452,623	1,369,251	1,253,818	1,464,662	1,464,662	1,258,631	-14.1%
Int'l Export full TEUs	964,067	953,495	913,332	790,620	691,446	691,446	555,556	-19.7%
Int'l Empty TEUs	650,459	705,114	775,763	591,197	836,012	836,012	835,355	-0.1%
Total International TEUs	*2,995,311*	*3,111,232*	*3,058,346*	*2,635,635*	*2,992,120*	*2,992,120*	*2,649,542*	*-11.4%*
Total Domestic TEUs	706,863	686,394	716,957	684,744	744,086	744,086	734,477	-1.3%
Grand Total TEUs	*3,702,174*	*3,797,626*	*3,775,303*	*3,320,379*	*3,736,206*	*3,736,206*	*3,384,018*	*-9.4%*
CARGO VOLUME (METRIC TONS)								
Container Cargo	26,105,730	28,868,125	28,671,813	25,508,550	26,177,940	26,177,940	23,043,966	-12.0%
Breakbulk	210,725	249,055	246,412	291,623	366,184	366,184	478,455	30.7%
Autos	224,864	228,295	305,816	244,612	262,289	262,289	286,148	9.1%
Logs	278,078	116,790	75,757	0	0	0	0	0.0%
Petroleum	715,546	665,670	636,150	677,469	524,332	524,332	708,619	35.1%
Molasses	35,980	45,686	46,661	42,400	32,729	32,729	31,769	-2.9%
Grand Total (Metric Tons)	*27,570,924*	*30,173,621*	*29,982,608*	*26,764,655*	*27,363,475*	*27,363,475*	*24,548,956*	*-10.3%*
Vessel Calls	1,946	1,930	1,870	1,684	1,646	1,646	1,729	5.0%
Autos (Units)	146,885	141,143	155,930	156,205	162,484	162,484	171,544	5.6%

Notes:

Auto unit count includes units handled at Port of Tacoma (POT) facilities

Includes volume from a privately-operated domestic container facility

FIGURE X

Q: What is your takeaway of these recent trends?

A: That it is imperative that the Commission stick to its cost causation principles to ensure that only the most essential and necessary costs and expenses are included in pilotage rates to ensure maximum competitiveness of Washington's seaports.

H. Federal and State oil spill safety measures remain robust and effective.

Q: Did you review the testimony of Mr. Costanzo regarding oil spills and oil spill regulations?

A: Yes, I reviewed Mr. Costanzo's testimony at Exhibit CPC-01T from pages 11-34 on this subject.

Q: Are you familiar with the two main Washington bills he mentions as directing Washington state oil spill strategy, OSPRA and VOSPRA (Exh. CPC-01T:17–18)?

A: Yes.

Q: Have these statutes been in place for some time or are they relatively new and imposing new standards?

A: These standards are not new. OSPRA has been in place since 1990. VOSPRA has been in place since 1991. Both were enacted contemporaneously with the federal Oil Pollution Act of 1990 (OPA 90), and all were adopted in response to the catastrophic Exxon Valdez spill in Alaska in 1989. These have been updated and revised and interpreted over time, including in 2004 when the State of Washington adopted the zero spills policy referred to by Mr. Costanzo.

Q: Does Mr. Costanzo emphasize the Exxon Valdez in his testimony regarding the need to prevent oil spills?

A: Yes, Mr. Costanzo highlights the Exxon Valdez spill in 1989 and also highlights a spill from a oil barge operator off the coast in 1988.

Q: Do either of these spills implicate any foreign-flagged vessel traffic or vessel traffic under pilotage?

A: No, and it is not surprising that he included prominent U.S. tank vessel spills. A state government listing of the top 50 spills showed that six of the top ten vessel oil spills that took place on the outer coast, Strait of Juan de Fuca or Puget Sound were U.S. tank barges. Exh. MM-49 (Ecology Spill History Report 2007). These spills took place between 1964 and 2004, the year the State of Washington adopted the zero spills policy.

Q: Did Mr. Costanzo's testimony include any reference to the largest spill that occurred within the Puget Sound pilotage district?

A: No, he did not mention the largest vessel spill inside the Strait of Juan de Fuca and Puget Sound region was from 1985 when the tanker ARCO ANCHORAGE grounded while it was being piloted to anchor in Port Angeles. The incident was determined to have involved pilot error.

Q: Does Mr. Costanzo mention any foreign cargo vessel spills or U.S. flagged vessel oil spills at all?

A: No.

Q: Why are these prominently missing from his testimony?

A: Because there is no record listed by either the Department of Ecology or the U.S. Coast Guard of any oil spills caused by these vessels during a transit to or from Puget Sound due to a collision, allision or grounding. This outcome can be accurately described as a "zero spills" achievement by the foreign-flagged shipping sector. While Mr. Costanzo's testimony goes to dramatic lengths to assert that Washington's safety and environment are at risk from what he claims are "unscrupulous" foreigners, it is particularly ironic that the only vessel sector that has actually achieved the "zero spills" goal while transiting into or out of Puget Sound are foreign-flagged vessels.

I. PSP's baseless vessel safety claims are unsupported by facts, ignore Puget Sound's impeccable safety record, and are, in any event, irrelevant to rate setting.

Q: Have you reviewed the testimony of Mr. Costanzo at Exhibit CPC-01T **34–51 under the heading "The Unscrupulous Practices of Foreign Flag Shipowners Pose Significant Risk to Puget Sound"?**

A: Yes.

Q: Do you find any objective basis to believe his testimony in this section has anything to do with risks to Puget Sound?

A: Absolutely not. Other than a passing reference to the testimony of Capt. Klapperich about the generalized claims of risks from larger vessels, Mr. Costanzo offers no evidence, facts, claims, assertions, or characterizations of any actual risks posed to Puget Sound on the basis of what flag a vessel is flying when it is under pilotage.

Q: What are some of the most glaring omissions from Mr. Costanzo's testimony about risks that he claims exist from foreign-flagged vessels?

A: Mr. Costanzo's accusations about risks posed by foreign flag shipowners completely ignores the application of the most basic of U.S. laws and the role played by the U.S. Coast Guard to enforce both international standards and applicable U.S. laws when foreign-flagged vessels are calling on U.S. ports. He fails to provide evidence of any vessels which are allowed to call on Puget Sound ports without an assessment by the Coast Guard. He further fails to mention key marine safety performance indicators that exist under the Coast Guard's Port State Control.

Q: What is Port State Control?

A: Port State Control as exercised by the US Coast Guard is how the US polices the enforcement of SOLAS, MARPOL, other international conventions, and local US rules and laws which are applicable to foreign vessels sailing to and from US ports. The counterpart enforcement program for US flagged vessels is called Flag State Control. The goals of the Port State Control program are focused on reducing substandard shipping and vessel conditions both in the United States and abroad. The Port State Control does this by requiring vessels that call on U.S. ports to meet stringent safety, environmental, and cyber security requirements. In enforcing Port State Control requirements, the Coast Guard is looking for potential deficiencies on vessels, working to actively promote the best safety management systems, and create the conditions for vessel operators to correct substandard conditions. Vessels with significant identified deficiencies are subject to detention. Not all detentions are safety-related; they also include environmental protection and security issues. Deficiencies with fire safety, safety management systems, and lifesaving equipment comprise the bulk of safety detentions, most of which have little or no nexus to piloting.

Q: Has the US Coast Guard summarized its key marine safety responses and its practices to screen and review vessels?

A: Yes, there are hundreds of documents regarding the key marine safety, environmental and security prevention and response activities of the US Coast Guard. One particularly good letter addressing issues in the Puget Sound was authored by Captain Steve Metruck, the current retired Rear Admiral and current Executive Director of the Port of Seattle, when he was Captain of the Port for Puget Sound. As then Capt. Metruck explained (Exh. MM-50),

> "Does the Port State Control foreign vessel targeting matrix continue to identify high risk vessels? Yes. We use this matrix daily to screen every vessel that is scheduled to arrive in Puget Sound and to determine what measures to implement to ensure the safety of Puget Sound. For example, based on the information presented, we may prevent a vessel from entering the Sound until repairs are conducted, or require additional precautionary methods such as tug escorts or daytime only transits, or even prevent the vessel from entering our waters. We also use the matrix to determine our inspection priorities, and where those inspections will take place. For vessels with significant problems, we may not allow them to proceed east of Port Angeles until they have satisfactorily completed a Coast Guard inspection."
>
> …
>
> "Is the targeting matrix being modified with new information over time to better target risk and inspection resources? Yes, a key feature of the matrix is that it is continually modified to address results of all vessel boardings and Coast Guard vessel control actions. The matrix is upgraded daily to show vessels of concern, whether from safety, security or environmental threats. We then optimize our inspection team schedules to ensure that we always identify and inspect the highest risk vessels, while still covering all of our normal routine inspections."

The descriptions of key Coast Guard marine safety programs outlined in Captain Metruck's letter are still applicable today and paint a picture in stark contrast to Mr. Costanzo's descriptions of foreign vessels.

Q: Are there any records or statistics quantifying the safety of foreign vessels and the success of the US Coast Guard Port State Control program at reducing the potential for accidents and substandard vessel operations?

A: Yes, the improvement for the safe operations of foreign vessels and the success of the Port State Control program is most clearly evidenced by impressive national, district and regional statistics. These records are published in the Coast Guard Annual Report on Port State Control, which has been produced annually since 1998. All reports can be found at https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/Foreign-Offshore-Compliance-Division/Port-State-Control/Annual-Reports/. I implemented Port State Control in the Ports of Los Angeles and Log Beach and Port Hueneme in 1994 and supervised and directed that same program in Puget Sound from 1998 to 2002.

Q: What does the most recent Port State Control Annual Report show?

A: The 2021 Port State Control Annual Report is attached as Exhibit MM-51.

The Report summarizes that less than one tenth of one percent of all port calls involved a security, environmental or safety related detention:

- In 2021, there were 73,974 port calls in the U.S. involving 10,945 vessels from 81 different flag states.
- There were 63 detentions nationwide, less than one for every thousand port calls.
- Lowest safety detention rate on record occurred in 2021.
- The QUALSHIP 21 program that identifies vessels committed to environmental stewardship ended calendar year 2021 with 3,661 vessels enrolled.
- Five nations were removed from the Targeted Flag List in 2021.

These signal a very successful system getting even better.

Q: What does the 2021 Annual Report show in terms of safety trends for the Puget Sound?

A: The Puget Sound region stands out as one of the safest regions if not the safest region in the country when it comes to oil spills and deep draft vessel operations, including foreign vessels. In addition to the oil spill record of zero spills while transiting, as the Puget Sound Coast Guard Sector only detained 2 vessels in 2021.

Q: What is the historical record of the Puget Sound with respect to vessel safety trends?

A: As described in Exhibit MM–52 and Figure Y, below, the Puget Sound has maintained over the years an impeccable vessel safety record with very low levels of detention necessary with 100% screening and thousands of physical vessel examinations and boardings by the US Coast Guard.

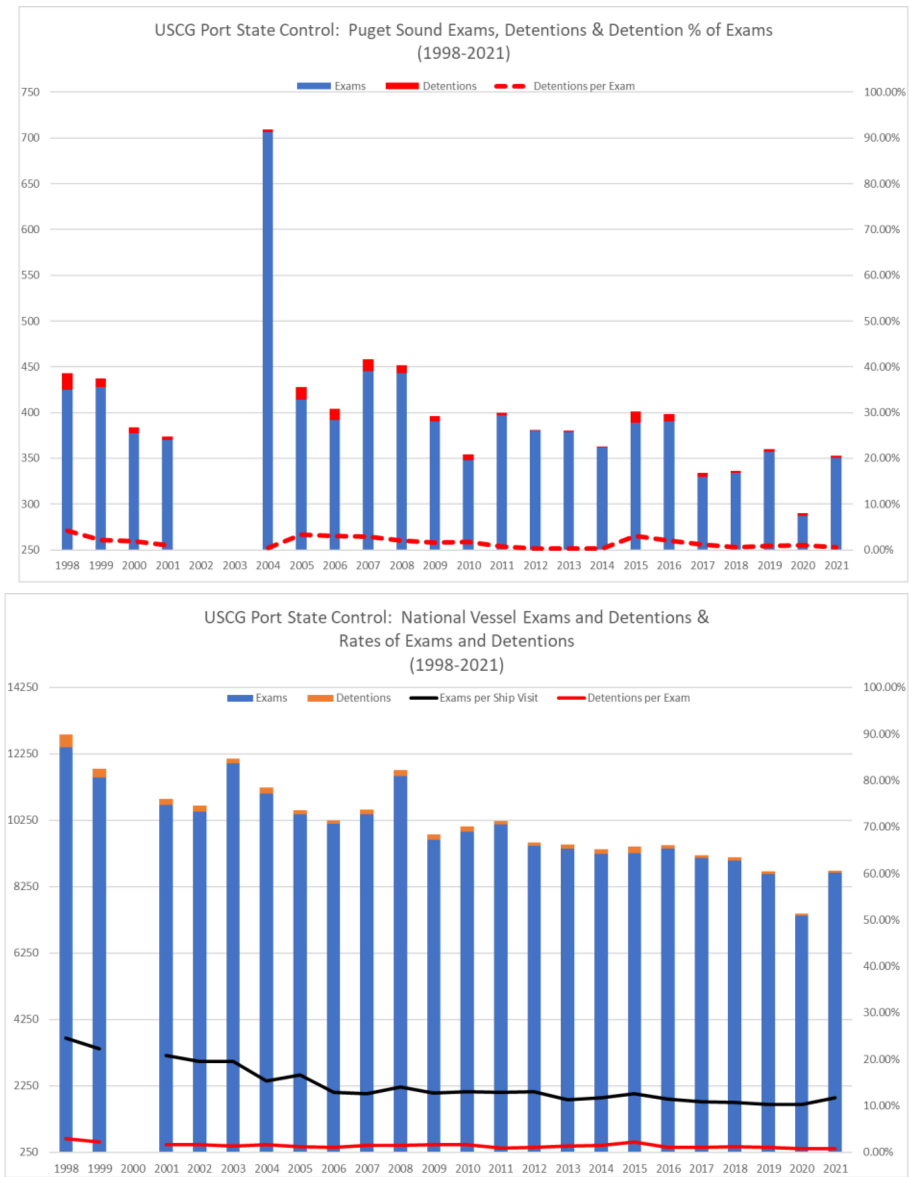


FIGURE Y

Q: When you review these statistics and compare them with Mr. Costanzo's testimony, what do you conclude about the accuracy of his allegations?

A: Any review of the basic key performance indicators of marine safety in the United States, and the statistics in the Puget Sound in particular, counters the claims of Mr. Costanzo. For example, one of his most incendiary comments was the allegation that a "very significant percentage of the international shipping industry can be fairly characterized as fundamentally unscrupulous and exhibiting a serious disregard for human safety and environmental protection." Exh. CPC-01T 50:1-4. Mr. Costanzo offers no evidence to support this claim. Vessel safety statistics show the contrary. Mr. Costanzo's allegations also wrongly imply that the U.S. Coast Guard is either incompetent or willing to disregard the law. Fortunately, the facts prove otherwise: foreign shipping at large is exceptionally safe and law-abiding

VII. PSP'S PROPOSED INCREASES OF DNI AND EXPENSES ABOVE THE EXISTING FORMULA'S REVENUE REQUIREMENT DETERMINATIONS ARE UNJUSTIFIED AND MUST BE DENIED

Q: Has PSP introduced any additional and new proposals or variables that represent substantial increases in revenues over and above the revenue requirements generated by application of the existing Commission formula?

A: Yes, PSP proposes substantial increases in (1) pilot TDNI above what would already be generated under the formula and (2) pilot expenses above the amounts generated through standard application of cost causation criteria.

Q: Should any of these increases be approved?

A: No. These proposals should be rejected and DNI should be calculated in a manner which is consistent with the prior rate case formula.

A. PSP seeks a dramatic and excessive increase in DNI outside of the Commission's calculation based on exogenous factors with no clear connection to DNI.

Q: Has PSP followed the Commission's adopted methodology and formula for the calculation of pilot DNI in its petition?

A: No, PSP does not present any calculation of TDNI based on the prior rate case Order.

Q: How does PSP propose to calculate DNI in this rate case?

A: PSP is proposing to calculate DNI solely by comparison to the income of pilots licensed in a small percentage of other select pilotage grounds around the country. Specifically, the filing of Mr. David Lough concludes that his testimony based on a compilation of "compensation ('net income') for licensed maritime pilots in the United States," is intended to "offer my opinion of what I consider to be a level of 2023-per pilot target distributable net income ('DNI') for Puget Sound Pilots that is aligned with and reflective of a middle-of-the-market annual rate compared to other major pilot groups throughout the nation." (Exh. DL-01T 2:3-10).

Q: Does PSP offer other ancillary justifications for the DNI calculated by comparison to other ports?

A: Yes, PSP's testimony is full of references to the need for increases to pilot net income. The main themes are that increasing pilot net income in the Puget Sound could help achieve all the following:

- reduce callbacks,
- reduce fatigue,
- make pilot ladders safer,
- address issues surrounding the environmental impacts of ship-breaking in India, Pakistan, and Bangladesh,
- improve the diversity of pilots in the training program,
- eliminate current unsafe piloting,
- ensure that all applicants to BPC exams are the "best of the best" trainees taken from a nationwide pool, and
- reduce the risk of oil spills to zero.

PSP's testimony also somehow concludes that higher pilot net income is justified because certain customers were more profitable during the COVID pandemic than normal and because certain customers were subject to additional regulatory scrutiny during the pandemic by the Federal Maritime Commission.

Q: Do any of these ancillary justifications reasonably relate to the setting of DNI by the Commission in this case?

A: No, there is absolutely no connection between any of these proposed factors or alleged outcomes and pilot net income.

1. PSP's comparable ports theory and analysis is incomplete, inaccurate, and even less compelling than the deficient comparable ports arguments PSP forwarded in the prior rate case.

Q: What is PSP's proposed DNI?

A: Mr. Lough proposes that $543,055 "is the minimal level of income that the UTC should approve as DNI for the Puget Sound Pilots." (Exh. DLL-01T 18:16-18).

Q: Is this proposed DNI based on the Commission's approved formula for the calculation of DNI?

A: No, Mr. Lough proposes to calculate pilot DNI differently from the Commission's most recently adopted methodology.

Q: Does Mr. Lough provide any work papers pursuant to WAC 480-07-525(4)(s)?

A: I didn't see any work papers from Mr. Lough that demonstrated the required comparison in WAC 480-07-525(4)(s).

Q: Why is the compliance with this work paper requirement important?

A: WAC 480-07-525(4)(s) is important to ratepayers because it demonstrates plainly what is at stake in a proposed change in calculation methodologies. Here, Mr. Lough has not provided this, so it is impossible to know from his testimony how to compare the proposed calculations of net income as proposed by PSP in this case to how pilot net income would have been calculated according to the Commission's order in the last rate case. The rule also requires a brief narrative to describe the change: while Mr. Lough makes arguments in support of his proposal, he does not include any narrative that compares and contrasts the two rate-setting approaches or the differences in the outcomes that they would generate.

Q: What is Mr. Lough's proposed justification for adopting his new DNI methodology that relies on an evaluation of comparable ports?

A: Mr. Lough concluded that his methodology is required because "PSP must offer net income levels comparable to the premier U.S. pilot groups" and that "[f]ailure to match DNI to competitively-aligned net income will, in my opinion, create undue and undesirable risk to PSP's ability to attract a share of the best pilot trainee candidates in the U.S. and achieve the workforce diversity needed for success." (Exh. DLL-01T, 20:3-10).

Q: Did Mr. Lough provide in his testimony any basis for his determination of what a premier pilot group is and what qualifications give him a basis to make such a determination?

A: No.

Q; Did Mr. Lough describe any methodology for choosing the pilot grounds he listed out of the more than 60 pilot grounds in the United States?

A: No, nothing aside from conceding that these were the only sources of data that he was provided by PSP.

Q: Did Mr. Lough provide a methodology to normalize all relevant factors to fully compare pilot grounds' workload, difficulty, expenses, training time or other such factors?

A: Aside from his application of a regional cost of living analysis, which is a factor exogenous to pilot operations and which requires no knowledge of actual pilotage, he did not.

Q: Did PSP propose a version of this same argument in the prior case?

A: Yes, this DNI proposal is based on the same type of testimony and arguments as those submitted by PSP in the prior case. As described by UTC Staff in its testimony in the prior order "Capt. Carlson testified that PSP is requesting a distribution of $500,000 for each pilot. These amounts are based on pilot earnings in various pilotage districts which Capt. vonBrandfels cites as comparable pilotage districts." TP-190976 Exh. SS-1T 14:7-12.

Q: What was the ultimate disposition of the Commission regarding these arguments in the prior case?

A: The Commission did not incorporate a comparable ports analysis into its formulation of DNI in the prior rate case. It instead relied on a cost causation model for the calculation of DNI based on a proposal by UTC Staff.

Q: What was UTC Staff's reaction to the PSP attempt to use a comparable ports analysis as a basis for a calculation of DNI in the prior rate case?

A: The UTC Staff position on the lack of reliability and utility and general use of the PSP comparable ports analysis was unequivocal:

> I address PSP's proposal to use comparable earnings as a standard to set pilot DNI. I argue that **the different regions proposed by PSP are, in fact, so dissimilar as to negate any usefulness as a benchmark for the Puget Sound region**.

TP-190976 Exh. SS-1T 4:4-6 (emphasis added).

> [The earnings data provided by these comparables] **appear to not be truly comparable on their face.** Not only are the communities they serve unique as to cost of living, but the challenges pilots in those district face in their day-to-day work are not comparable to those faced by Puget Sound pilots. Even assuming that those challenges could be overcome, without a financial audit for each district Staff cannot verify the comparability of the proffered districts.

Id. at 15:7-11 (emphasis added).

> The challenge when using any form of comparable is proving actual comparability. However, **in the absence of an audit of the proposed comparable districts, I was unable to verify whether the districts have similar conditions, features, or**

> **variables, and by extension, whether the average pilot income of those districts should be considered comparable**. The eight districts offered by Capt. vonBrandenfels show the wide breadth of pilotage. The eight comparables include bar pilots, river pilots, New Orleans Delta pilots, and harbor pilots. **Of course, in a fair evaluation, one must also consider information from pilotage districts excluded from the list of comparable districts**.

Id. at 14:15-15:3 (emphasis added).

Q: Does PMSA agree with the UTC Staff regarding comparability in the prior rate case?

A: Yes.

Q: In its filing in this present rate case, has PSP addressed any of these issues?

A: No. In fact, PSP's filing in this rate case is much less robust and less compelling; it includes less evidence and expertise than PSP's filing in the prior rate case.

Q: Please explain.

A: In the prior rate case PSP presented multiple witnesses that sought to provide evidence of the actual comparability of pilotage grounds, including Cap. vonBrandenfels, Capt. Quick, Capt. Carlson, and Capt. Nielsen. PSP's testimony in this rate case lacks any testimony on any basis for comparability.

In the prior rate case PSP offered witness testimony on the question of how to address analytical issues of comparability. This testimony, provided primarily by Capt. Quick, while inconsistent and without evidentiary support, was nevertheless offered by an individual with decades of experience in the maritime industry and a deep understanding of the role of pilotage in the marine transportation system.

In the current case, no attempt is made to establish bases of analysis for how one might consider questions of comparability. PSP hired a compensation consultant with no background or familiarity with pilotage who has seemingly conducted no research on his own in the preparation of his testimony other than review of the documents provided to him by PSP, and who conducted no independent analysis of obvious compensation factors that might impact a pilot's compensation such the number and type of assignments worked in a year, the skills required in a particular pilotage ground, the risks involved, or the length of time to complete training.

Q: In the prior rate case did PSP acknowledge that it is hard to acquire comparable data on pilot compensation from around the country?

A: Yes, in the prior rate case Capt. vonBrandenfels for PSP acknowledged the challenge of obtaining comparable data from the majority of the pilotage grounds across the United States and the opacity surrounding pilot compensation.

Q: In the current testimony for PSP does Mr. Lough acknowledge or attempt to address this issue?

A: No.

Q: Has Mr. Lough's testimony addressed any of the baseline practical concerns about comparability raised by UTC Staff in the prior rate case?

A: No. Mr. Lough's testimony does not address any of the practical impediments to arriving at an objective and verifiable pilot net income for comparison purposes—impediments described by the UTC Staff in the prior rate case. Mr. Lough's testimony does not address:

- Consideration of comparability of day-to-day work by pilotage district and area.
- Provision of a financial audit for each district such that UTC Staff can verify the comparability of the proffered districts.
- Provision of an audit of pilotage district conditions, features, or variables that would assist in the determination of whether average pilot income is comparable.
- Consideration of differences in the types of piloting in each district, including bar pilotage, river pilotage, harbor pilotage, and New Orleans delta pilots.
- Consideration of information from pilotage districts excluded from the list of comparable districts provided by PSP in its filing.

Q: Did you examine Mr. Lough's comparison of "Pilot Group Income & Benefits" at Exhibit DL-06 and its related supporting testimony at Exhibit DL-01T?

A: Yes.

Q: In your opinion are Mr. Lough's summaries reliable and accurate representations of pilotage income and benefits?

A: No, Mr. Lough's testimony is overly simplistic and suffers from significant discrepancies, inconsistencies, and data gaps that one might expect from someone who is unfamiliar with pilotage. The obvious result is that his conclusions are inaccurate and unreliable.

Q: Of these deficiencies, please describe how his reports of net income from other pilotage districts at Exhibit DL-06 is overly simplistic.

A: There are several to take note of. For example, Mr. Lough comingles data from different years from different pilotages grounds. He then attempts unsuccessfully to adjust them all to 2023 by saying the data is based on rate orders that include cost of living adjustments (COLA). This is not an accurate representation of pilot income.

As everyone in this case knows, a rate order with a COLA does not represent what a pilot group actually makes. Mr. Lough's own chart shows the fallacy of this methodology by listing two net income numbers for PSP for 2021: the amount that was included in the last general rate case as 2021 DNI, $400,855, and what was actually earned in 2021, $295,616. By comingling these factors, Mr. Lough picks and chooses comparabilities factors and mixes net income from a rate order and actual pilot incomes, which are not the same.

Q: Please describe how his reports of net income from other pilotage districts at Exhibit DL-06 are internally inconsistent.

A: Mr. Lough's approach to mixing various years of pilot income is inconsistent even within his table. For example, his exclusion of a single year pilot net income comparison, and then its unique substitutionwith a multi-year average of net income in San Francisco is problematic and suggests cherry-picking.

Q: Does PMSA agree with Mr. Lough's explanation for the use of an average to skew prior net income for the San Francisco Bar Pilots?

A: No. The San Francisco Bar Pilot data is what it is. Both the pilots and the California Board of Pilot Commissioners make this data public and available. These past data amounts do not need any interpretation or adjustment based on how future rates might change, any more than any of the other pilot groups' income and benefit levels might change in the future. If Mr. Lough had played it straight on this chart instead of using this selective averaging to avoid using the last year of actual net income of San Francisco as a comparability benchmark, the San Francisco number would have been the lowest comparable on the list for 2021: $328,154…with a caveat.

Q: What's the caveat?

A: The $328,154 for San Francisco is literally the lowest comparable pilot income on his chart, but only because an even lower number that should have been in Mr. Lough's chart was missing. The group he excluded was the 2020 LA Harbor Pilots, whose 2020 net income would have averaged

$308,168 based on the data included in Exhibit DL-19 if applied the same as with San Francisco.

Q: Did Mr. Lough's data provide him with the basis to also include this comparison?

A: Yes. From Exhibit DL-19, it is obvious that Mr. Lough has 10 years of data for the Los Angeles Pilots; yet he does not include a multi-year average for them, choosing instead to use only 2019.

Also, this raises another issue: if Mr. Lough has the 2020 data for the LA Pilots, why did he choose not to use 2020 and instead rely on 2019? Because he presents no methodology or reasoning for his selections, it is impossible to know. But what we do know is that he used 2019's $434,712 as the basis for a COLA calculation in 2023 of $456,719 for the LA Harbor Pilots, when he actually had the 2020 data in his possession and it showed an average $308,168 net income for LA Harbor Pilots. If he had used this number for his 2023 COLA calculation, his chart would have looked much different.

Q: Does this selective approach to the data show why his inconsistent treatment of the San Francisco Pilots data points was also significant?

A: Yes, if in the case of the San Francisco Bar Pilots Mr. Lough had selected data as he did with the LA Pilots, he would have reported that San Francisco Pilot income was $499,415 in 2019 and then added three years of COLAs. Once again, Mr. Lough's own chart shows the fallacy of this methodology as the actual 2021 income for San Francisco pilots was $328,154.

Q: Are there other pilotage grounds with multi-year income data which Mr. Lough could have chosen to review?

A: Yes. Mr. Lough completely omits multiple years of net income data available from public sources for Grays Harbor Pilots, Great Lakes Pilots, Columbia River Pilots, and Columbia River Bar Pilots, for example. He fails to explain why he does not use data from those pilotage grounds.

Q: Are there additional components of Mr. Lough's chart at Exhibit DL-6 that are also inaccurate or subject to significant misinterpretation?

A: Yes, there are several with respect to his characterization of pilot retirements in all these grounds as "Pension" benefits with "Pension Accrual %" and "Pension Funding."

This is probably most important to note for the Columbia River and Columbia River Bar, where Mr. Lough claims that they have a "Pension Accrual %" of 1.25%. This is absolutely untrue. These pilots do not get a pension and do not have an accrual percentage of benefits: Columbia River and Bar pilots receive a Target Gross Income which includes compensation for their benefits over and above their Target Net Income, and they are allowed to make their own independent decision with the earnings distributed to them. This is not a pension, and it is not a funded pension: these pilots have options to contribute to a SEP-IRA or other similar self-funded IRS-approved plan for independent contractors.

We have a similar concern regarding his blanket non-description of the "public funding" of benefits for LA Pilots. This ignores the fact that LA Pilots must contribute to their own retirement at a rate of 7% and to their own medical insurance at a rate of 4% of income. Applying these adjustments to the $434,712 average net income reported by Mr. Lough for 2019 results in a revised net income of $386,894. If he had applied this to the $308,168 average net income for 2020 the revised average net income would be $274,270.

Q: Are there other concerns that you have regarding Mr. Lough's comparability data?

A: Yes, he does not analyze the income provided per pilot based on the amount of service provided or the amount of work or the challenges of the work completed by the pilot in exchange for this income. What is revenue per assignment? What is revenue per ton? What is revenue per hour? What is revenue per mile? What are the pilotage ground challenges? How many bridge hours per pilot? What percentage of piloting is in restricted waterways versus open transits? No benchmark is made to account for the unit of work or the type of work that is intended to be compensated. That is a significant deficiency. Do pilots in Lake Charles work 120 days a year while Great Lakes pilots work 240 days a year? Nobody knows from Mr. Lough's testimony or charts.

Q: Does Mr. Lough assess comparability of other pilotage-specific factors, such as navigational, geographic, or training factors, or differences in the pilotage ground or risks of boarding areas?

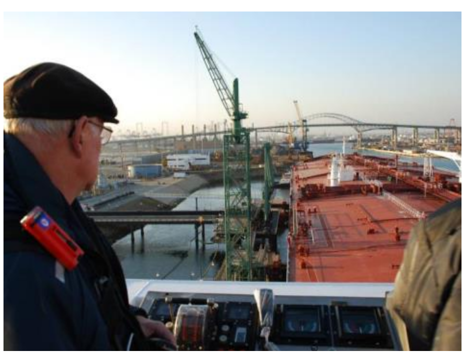
A: No. Mr. Lough focuses solely on compensation factors.

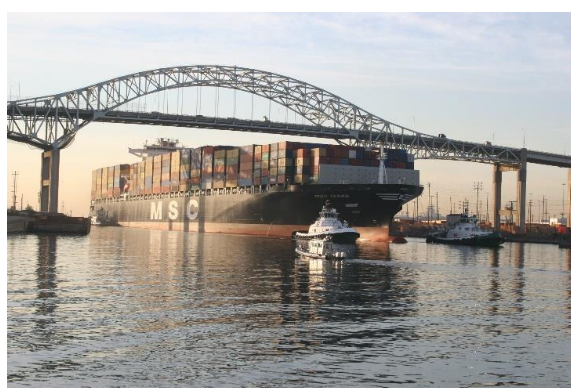
Q: What is the significance of these local and other factors?

A: The unique nature of navigation in nearly every port is one of the reasons why pilotage is, and should remain, focused on local knowledge and skill sets. For example, in the prior rate case this came up in the consideration of the testimony of Capt. Nielsen, and it was demonstrated that the Columbia River's pilotage district features are fundamentally unique and different from the Puget Sound. The Columbia River and Bar are unique waterways: the Puget Sound does not have a bar to cross for entry, and Puget Sound district pilotage is not the same as river pilotage.

Q: Can you help to illustrate why these factors and differences complicate claims of comparability?

A: Yes, several pictures might help convey these differences. First are two pictures from the Port of Long Beach showing the constricted waterways much of their piloting is conducted in. The bottom picture from the testimony of Capt. Klapperich in this case shows the wider, deeper waterways that characterize the navigational lanes of the Puget Sound.





Port of Long Beach

PSP ECK-01T

Pilotage grounds are different and present different challenges, requiring skills tailored to each pilotage ground. Puget Sound Pilots spend more time on the bridge of a vessel while transiting in large waterways with a traffic separation scheme including a vessel traffic service, with relatively little time spent in constricted waterways. Pilots in Long Beach spend less time overall on the bridge of a vessel, but nearly all of that bridge time is spent operating in constricted waterways. Hence the extended amount of trips necessary to get fully qualified in Long Beach.

Q: After reviewing these photos, is it possible to conclude that these are or are not comparable pilotage grounds?

A: No. As UTC Staff concluded in the prior rate case, it is impossible to establish comparability generally. Comparability can only really occur if you first identify the similar conditions, features, or variables that exist before proceeding further, for example with audited financials or assignments or benefit comparisons and the like. If that does not occur, comparability is not an appropriate ratemaking factor. As PSP has not done so here, the

Commission should not use comparability to set DNI and should not aside its existing formula in favor of a new comparability formula.

2. PSP has not established how any of its proposed factors offered in support of its requested DNI are related to its requested DNI.

Q: Does PSP's testimony establish any numerical factors in support of its requested DNI other than its comparability analysis?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and pilot callbacks?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and pilot fatigue?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and pilot ladder safety?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and vessel safety, including the relative safety of vessels sailing under foreign flags versus US-flagged vessels?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and the practices employed by ship-breaking firms in Asia?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and the diversity of pilots, pilot trainees, or pilot applicants?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and ability to attract highly qualified BPC-approved pilot candidates?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI to train highly qualified and BPC approved pilot candidates?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and ability to retain licensed pilots?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and vessel profits or vessel losses, generally?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and the profits or losses of container shipping?

A: No.

Q: Does PSP's testimony include any explanation, evidence, or demonstration of either a causal or correlative relationship between its proposed DNI and the profits or losses of bulk carriers, cruise vessels, general cargo vessels, tank vessels, roll-on/roll-off, or refrigerated vessels?

A: No.

B. PSP's proposed creation of new automatic adjusters should be denied.

Q: What is PMSA's position on the automatic adjusters proposed by PSP?

A: PMSA opposes all the automatic adjusters as proposed by PSP at Exhibit IC-01T 30:10-31:18, as described at Exhibit IC-07, and as to be implemented at Appendix B (Revised, 07/14/2022).

Q: Does PSP provide any clear policy rationales, detailed justification, or description of the outcomes anticipated from any of its automatic adjusters?

A: No, the testimony by PSP is particularly deficient with respect to the explanation of these adjusters. We are concerned that these adjusters, which would touch nearly every facet of the tariff, will essentially substitute themselves for the formulas already adopted by the Commission, avoid future comprehensive scrutiny of the tariff altogether, and that these changes could be justified on the basis of just three general sentences in Capt. Carlson's testimony in response to the question "Why does PSP propose adoption of multiple automatic adjusters to the tariff funding the Puget Sound pilotages system?" at Exhibit IC-01T 30:10-19.

Q: How does Capt. Carlson answer this question?

A: In its entirety, PSP's sole justification for the adoption of these seven automatic adjusters is Capt. Carlson's answer, which reads:

> A: The past three years have shown that several of the key factors that drive tariff funding for our pilotage ground can no longer be assumed to follow a multi-year trend, but instead are subject to considerable volatility. These include vessel traffic, the range of ship types making up that traffic in any given year, vessel tonnage trends and some of our cost categories, such as pilot boat fuel. To address that volatility and avoid the need for expensive and time-consuming general rate cases, PSP proposes seven different automatic adjustment mechanisms.

Q: Do the pro formas submitted by PSP in the testimony of Mr. Weldon Burton at Exhibit WTB-05 include any mention, evaluation, or projections of revenues associated with the automatic adjusters?

A: No, the pro forma does not include any revenue projections based on any of the adjusters, a fact confirmed by Mr. Burton. Exh. MM-53 (PSP Response to PMSA DR 468).

Q: Why is the lack of explanation of the justifications, theories, and revenue projections by PSP in support of these automatic adjusters a problem?

A: It is impossible to know what the purposes of these automatic adjusters truly are and how PSP, the users, the public, or the Commission would know if these are reasonable or justified. Capt. Carlson's short explanation that they are needed because of traffic volatility and tonnage trends is so broad and vague as to be unintelligible and exceptionally unhelpful. These descriptions are so brief and lacking in detail as to make us wonder how the proposal could be construed as meeting the justification requirement of RCW 81.116.030(2)(c) for automatic adjustment mechanisms or the filing requirements for sufficiently detailed workpapers consistent with WAC 480-07-525(4)(s). Without a comprehensive explanation of all involved motivations, we cannot fully understand why PSP decided to submit these adjustments, why these adjustments were constructed or fashioned in the manner that they are presented, or the pros and cons compared with the status quo or other options. We are left only the minimal descriptions in Capt. Carlson's testimony and at Work Paper Exhibit IC-07.

Q: Please describe generally why PMSA opposes all the proposed adjusters.

A: There are many reasons to oppose these adjusters across the board.

First, PSP's automatic adjusters functionally transfer several rate-setting functions back to the Board of Pilotage Commissioners (BPC) and away from the Commission. This is highly problematic. For example, the automatic adjuster based on the number of licensed pilots will directly turn all decisions made by the BPC that could impact the number of pilots into tariff decisions. Every decision to issue a license to a new trainee has revenue implications and becomes a rate hearing; every decision to adjust the Target Assignment Level and the number of available licenses has revenue implications and becomes a rate hearing; and pilot discipline actions that could suspend or remove a license from a pilot has revenue implications and becomes a rate hearing. This is precisely the type of mingling of economic regulation and safety and licensing regulation that the Legislature ended by moving the rate-setting functions for pilotage away from the BPC and to the Commission. The Commission should not adopt this proposal by PSP to move some of it back to the BPC. The split in jurisdiction and responsibilities has been implemented and is a positive outcome.

Second, the combination of these adjusters would functionally allow PSP to avoid not just future general rate case filings, but any filings and accountability with the Commission altogether. As conceived by PSP, none of the adjusters, with the exception of the pilot boat and major capital expense, would require new compliance filings with the Commission. As a result, the Commission and the public would see nothing from PSP with respect to tariff rates and adjustments for virtually anything. This is the key hallmark of all these automatic adjusters: instead of streamlining and lowering the costs and administrative burdens of participating in the Commission's tariff approval and oversight process (which PMSA would support), PSP is designing these automatic adjusters to avoid Commission oversight and jurisdiction altogether (which PMSA does not support).

Third, the self-executing language that PSP has proposed for these adjusters in its Appendix B filing are highly improper, if not illegal. As proposed, none of these items tells a ratepayer what the rate that needs to be paid is at any point in time. They are unclear, vague, and will necessarily empower PSP to publish its own off-tariff publications which will become the actual tariffs, not the Commission-published tariff. This will occur because, as written, it is impossible to know or determine the rates that are actually in effect without asking PSP for additional off-tariff calculations, additional off-tariff data, additional off-tariff interpretations, and additional off-tariff application of these adjusters. All of this would result in payments inconsistent with the published tariff.

This is exceptionally problematic in multiple respects for any tariff. Imagine the number of customer calls that result from a tariff that basically says the answer to the question "what do I pay?" is not in the tariff but is "call your service provider." This will create a significant amount of confusion for pilotage customers. The ratepayer vessels that make up PSP's clientele are, by law, mostly foreign-flagged vessels, operating in international trade. These operators need to be able to know and affirm their rates remotely, consistently, and in time zones all across the globe when reviewing their bills and charges from agents. This tariff frustrates this basic ability to know your billing without having to turn to PSP for guidance and additional information. The State of Washington should not surrender its position as the tariff authority to PSP.

Fourth, these automatic adjusters have no sunset dates, wind-downs, off-ramps, or limits on their application. PMSA is opposed to the creation of open-ended authority for rate changes and increases. Without clear and required end dates, they are burdensome and speculative in nature.

Finally, as described by PSP, many of these adjustments could be in excess of the general rate proceeding threshold of WAC 480-07-505(1)(a) of the 3% alterations of gross revenue that require the initiation of general rate proceedings, particularly if multiple adjustments occur simultaneously. This would occur while avoiding the general suspension requirement for pilotage rate filings required by WAC 480-07-505(1)(e). While WAC 480-07-505(4)(c) obviously intends to allow filings that are automatic in nature beyond the general rate proceeding threshold and notwithstanding the general requirement for all pilotage rate petitions to be suspended, the way that the Commission polices these requirements is through the requirement that all tariff changes are only valid through filing. Moreover, we are concerned the sheer number of potential adjustments proposed with respect to all these various surcharges could cause a conflict with the prohibition on parties being restricted from filing a petition with the Commission "no earlier than one year following the effective date the tariffs in effect at the time of filing were established" under RCW 81.116.030(1). The effective dates of tariffs in effect under these automatic adjusters would potentially occur quarterly and on alternative annual schedules, potentially blocking future tariff filings. Nor at this point in this case could PSP remedy these defects amending its proposed tariff.

Q: Does PMSA have specific concerns regarding each of the individual automatic adjusters as well?

A: Yes.

Q: Please describe PMSA's concerns with PSP's proposed Automatic Adjuster #1, the "Annual Traffic Adjuster."

A: As a preliminary matter, while Capt. Carlson mentions traffic volatility concerns as a basis for this adjuster, there is no justification or explanation for the methodologies to be established by this adjuster. For example, why should the tariff enshrine the assumed vessel level for 2023 in perpetuity?

The manner in which the Traffic Adjuster would "true up the actual level of Vessel Movements to the assumed level of 7442 Vessel Movements for 2023" seems a blatant attempt to use the rate-setting process to circumvent the Commission's creation of rates that provide PSP with the **opportunity** to earn compensatory revenues. Instead, it would substitute a rate structure that attempts to **guarantee** these revenues. This is improper.

The Commission's incentive principles would be turned on its head if it adopted an automatic adjuster which produced more revenue for less work and less revenue for more work. Imagine being forced to pay more to have pilots reduce their piloting hours even further than they already have, and likely producing more delays in the process. Such an outcome would be extremely unfair.

As the Commission stated in the prior rate case, the Commission sets rates to ensure "the opportunity to earn a return." Order 09, ¶ 35 (citing *People's Org. for Wash. Energy Res. v. WUTC,* 104 Wn.2d 298, 808 (1985)). This opportunity is granted by the Commission's ratesetting, but it is up to the prudent, wise, and efficient management of the regulated company to actually earn what the rate provides. *Id.* at ¶ 36. "In sum, rate-setting seeks to create incentives for efficiencies that would normally occur as the result of market competition. 'The fundamental economic goal of regulation is straightforward: to mimic a competitive market outcome, even when the underlying market is not competitive.' The Commission seeks this efficient outcome by setting a reasonable rate of return that encourages prudent decision-making in monopoly enterprises." *Id.* at ¶ 39 (citing *Principles of Utility Corporate Finance* 7 (2011)).

The Annual Traffic Adjuster is antithetical to these goals. It attempts to make a guarantee of revenue at a certain traffic level, not just an opportunity to earn revenues based on the actual market conditions that result. The adjuster also attempts to do the opposite of what occurs in a competitive marketplace. In a competitive marketplace, as demand for services decreases, service providers must adjust by cutting expenses, including personnel, and by lowering prices to maintain margin. In a competitive marketplace, as demand for services increases, service providers can increase the supply of services and prices and expand spending while growing margins. The adjuster here seeks to do the opposite because it seeks to increase costs on ratepayers as their demand for pilotage services decreases.

The Annual Traffic Adjuster would also gut the heart of the application of the principle of incentivizing efficiency in the formula adopted by the Commission in the prior rate case. As currently built, the number of pilots factor in TDNI is built around the creation of a positive feedback loop for efficiency as applied against projected annual traffic. But this adjuster destroys this incentive by eliminating the annual traffic variable. This makes the whole concept of efficiency based on the amount of work that pilots actually complete moot by functionally eliminating as a factor for TDNI the total work actually completed. In the process it eviscerates the Commission's incentive principle.

In the prior rate case, the Commission approved two components to the pilotage rate that build positive feedback loops for efficiency: a tariff which includes revenue generation on a per-hour basis and a determination of number of pilots to be funded based on an Average Assignment Level (AAL).

This tariff construction by the Commission rewards efficiency by allowing PSP to earn more revenue through more pilotage time worked and by driving rates for that time worked higher as the pilots' collective AAL increases over time. These trends both reward increases in total work and in efficiency with higher growth in DNI, benefitting pilots and ratepayers alike. The Annual Traffic Adjuster would work at cross purposes with these incentives built into the Average Assignment Level application in the formula.

Q: Please describe PMSA's opinions and concerns with PSP's proposed Automatic Adjuster #2, the "Quarterly New Licensee/Retiree Adjuster."

A: First, Capt. Carlson does not even mention much less attempt any justification or explanation for the need for this Quarterly New Licensee/Retiree Adjuster. This adjuster would add revenues for new pilots and decrease revenues for pilot retirements. It would work at cross purposes with the principles of incentivizing efficiency based on an Average Assignment Level. The current Commission formula creates a positive feedback loop: more work and higher efficiency work by pilots results naturally in higher growth in DNI. This occurs because the AAL methodology will result in higher DNI, which in time grows revenue due to the 5-year look back. In contrast, this adjuster would move rates up when a new pilot is added though the addition of a new pilot will decrease the AAL for all the pilots collectively. This Quarterly New Licensee/Retiree Adjuster would replace that long-term efficiency incentive with a short-term incentive to get immediate revenue boosts through increases in the number of pilots, even if over the long-term this ultimately decreases AAL. Under the current formula, over-staffing would decrease DNI, thus creating a disincentive to over-staff. This adjuster would eliminate this incentive.

Taken to its logical extreme, consider that if you added ten times the pilots than the current level and the new Adjuster yielded DNI ten times higher, but the actual work done by each pilot would on average 10% of the prior workload. Under this scenario ratepayers would be punished with costs ten times higher for no change in the service, while pilots would each receive the same pay as before for 10% of the work. Notably, this adjuster also discourages efficiency: if the pilots were to become more efficient and increase jobs per pilot to such a degree that fewer pilots were needed, this adjuster would end up punishing those pilots who became more efficient by reducing rates and giving a windfall rebate to ratepayers. These outcomes demonstrate why this is a ridiculous policy to pursue and facially antithetical to the Commission's efficiency principles.

This would also invite gamesmanship in the timing, as illustrated below. As a Quarterly adjusted surcharge set "at the beginning of the quarter," presumably these adjustments would be set on January 1, April 1, July 1, and October 1 of each year. Given the incentive to boost pilot numbers for each quarter based on a single day, we would expect pilot trainees to gravitate towards licensing dates of December 31, March 31, June 30, and September 30 to maximize revenues for existing pilots in the prior quarter, and pilot retirees to start their retirements on January 2, April 2, July 2 and October 2 to maximize revenues for existing pilots in the following quarter. Under the existing AAL, no such gamesmanship exists, as the

Commission employs a 5-year look back which smooths out and eliminates the value of any such timing games.

Finally, as described above, we have very serious concerns about this adjuster undermining the division between safety and ratemaking between the BPC and the Commission. This has the very real possibility turn every pilot licensing decision at the BPC into a mini-rate hearing. This should be avoided.

Q: Please describe PMSA's opinions and concerns with PSP's proposed Automatic Adjuster #3, the "Annual Cost-of-Living Adjuster."

A: Again, Capt. Carlson attempts no justification or explanation for the need for this Annual Cost-of-Living Adjuster. This adjuster would automatically and every year apply a cost-of-living increase to virtually all the key revenue-generating tariff items. This would likely lead to DNI increases higher than cost of living. CPI adjusters based on cost of goods is more directly relevant to the median wage than it is to highly compensated individuals where such increases magnify and compound over time. This is also a departure from cost causation principles and the formula methodology for determining DNI on a five-year average basis.

To the extent that PSP argues that this is not just about DNI but also intended to cover expenses, that still raises tremendous concern for PMSA. As noted in my testimony above, PSP has been on a multi-year spending spree and seems to take for granted that the Commission will pass the expense increases along to ratepayers. This adjuster could lead to two equally bad outcomes with respect to PSP expense management: (1) PSP is incentivized to not manage costs at all, because the Annual Cost-of-Living

Adjuster will always cover more than the expenses, because it generates revenue increases based on gross pilot revenues, not net of expenses; or, (2) PSP realizes that 2021 is a year that it has built in historically high costs, and that the Annual Cost-of-Living Adjuster is using that high cost year as its baseline, so by being more efficient and cutting costs in future years, PSP can generate windfall net income for pilots by capturing as revenue the benefits that otherwise would have accrued to ratepayers in the form of lower rates over time. These outcomes are both inconsistent with the cost causation principle and the need to incentivize efficiency.

Finally, this adjuster would even make it hard for Staff to ever review the basic impacts of rate increases on DNI versus expenses because once this adjuster is in place, even if the other adjusters were not adopted, PSP would have almost no incentive to file a general rate case petition ever again. This is especially true because PSP is proposing this Annual Cost-of-Living Adjuster to be implemented over and above its already exceptionally large request for a tariff increase in this petition of greater than 35%.

Q: Please describe PMSA's opinions and concerns with PSP's proposed Automatic Adjusters #4 and #5, regarding the "Annual Pay-As-You-Go Pension Adjuster" and the "Annual Funded Pension Adjuster."

A: I provide extensive comments on PMSA's positions regarding the pilot retirement program in my testimony above and below. Suffice to say, we oppose these surcharges as unfair, unjust, unreasonable, and excessive.

Q: Please describe PMSA's opinions and concerns with PSP's proposed Automatic Adjuster #6, the "Annual Pilot Station/Pilot Boat Expense Adjuster."

A: As noted above, Capt. Carlson mentions in passing the need for the adoption of an adjuster for some cost categories including "boat fuel," but there is not much of an attempt at any justification or explanation for the need for this Annual Pilot Station/Pilot Boat Adjuster. This item still fails to address the basic considerations and issues that plague all these proposed adjusters with respect to its drafting, application, and lack of transparency and lack of filing accountability with the Commission.

However, the adjusters regarding pilot station and pilot boat expenses are areas of costs that PMSA would like to further explore. Likewise, as noted in our comments in the expenses section below, we support some of the proposed pilot boat expenses identified by PSP in this petition. We would have appreciated prior engagement by PSP on the question of automatic adjusters on these types of expenses well in advance of PSP's filing for this general rate case. Unfortunately, PSP never attempted to communicate with us in advance on issues where we could have reached common ground. I am including a description of several recommendations regarding these and other issues for addressing future automatic adjuster adoptions at the conclusion of my testimony.

Q: Please describe PMSA's opinions and concerns with PSP's proposed Automatic Adjuster #7, the "Periodic Pilot Station/Pilot Boat Capital Cost Adjuster."

A: Again, Capt. Carlson makes virtually no attempt to justify or explain the need for this Periodic Pilot Station/Pilot Boat Capital Cost Adjuster. As with operational expenses, these capital costs regarding pilot station and pilot board expenses are areas of costs that PMSA would like to further explore.

However, these can be exceptionally large and substantial investments and they need more than a cursory 30-day approval and review process. It is our experience in other pilotage grounds that these procurements for pilot boats can pose significant issues with timing, delivery, and construction variables. This is yet another blank check cost adjuster proposed by PSP in general, and we are absolutely and strenuously opposed to any creation of a long-term liability for ratepayers simply on the strength of the presentation of a building contract and a letter from an underwriter and a 30-day review. Furthermore, as proposed, this adjuster will also create inconsistencies with the filing requirements of both RCW 81.116.030 and WAC 480-07-525. Any approved adjuster will need to meet both the procedural and substantive requirements of the applicable statutes and regulations to these filings and proceedings.

As mentioned above, I will present several recommendations regarding the potential for future automatic adjuster adoptions at the conclusion of my testimony.

C. PSP's proposed creation of a new retirement surcharge should be denied.

Q: Please introduce your testimony regarding PSP's retirement issues and the PSP proposed surcharge.

A: I have several points about PSP's retirement issues. First, PSP's retirement plan is established, maintained, managed, and funded solely by PSP. Second, PSP's proposal to shift all past, present and future retirement expenses to customers in a new surcharge is unfair, unjust, and unreasonable. Third, PSP's proposed transition to a multiple-employer defined benefit retirement plan is not fully developed, and its adoption would be premature in this rate case. Fourth, PSP's actuarial calculations for 2022 are significantly incorrect, already off by 20% when compared with the 2022 PSP pro forma, underestimating ratepayer costs. Fifth, PSP and its members have chosen to manage its retirement plan outside of the Employee Retirement Income Security Act (ERISA). Sixth, PSP has not disclosed or described the entirety of the retirement compensation available or applicable to its members. And, finally, PSP did not follow or respect the clear direction imposed by the Commission in its prior Order in the development of its proposal in this current rate case.

1. PSP's retirement plan is established, maintained, managed, and funded solely by PSP at the direction and under the discretion of its membership.

Q: Are you familiar with the terms of the "Amended Retirement Program of Puget Sound Pilots"?

A: Yes.

Q: How would you characterize the PSP Retirement Program?

A: The PSP Retirement Program is a deferred compensation benefit retirement plan for pilot members and their widows or widowers, fashioned as an unfunded defined benefit retirement, which is agreed to be paid out of pilot income by all of the active members of PSP under Section 16.9 of the PSP By-laws.

Q: Who are the participants in the PSP Retirement Program?

A: Active and retired PSP pilots or their surviving spouses.

Q: Who has voting rights in the PSP Retirement Program?

A: Active and retired PSP pilots.

Q: Who established the PSP Retirement Program?

A: PSP created the current Retirement Program in 1982 and PSP has subsequently amended the plan.

Q: Has PMSA or any other industry group ever been a signatory to the PSP Retirement Program?

A: No.

Q: Has PMSA or any other industry group ever been a beneficiary of the PSP Retirement Program?

A: No.

Q: Has PMSA or any other industry group ever been a participant in the PSP Retirement Program?

A: No.

Q: Has PMSA or any other industry group ever been vested with a right to vote on the terms of the PSP Retirement Program?

A: No.

Q: Has PMSA or any other industry group ever signed a contract with PSP committing to fund any specific expenses of pilots?

A: No.

Q: Has PMSA ever signed a contract with PSP committing PMSA or its members to fund, assume liability for, or guarantee funding of pilot deferred compensation or pilot retirement benefits administered by PSP?

A: No.

Q: Does PMSA have the authority or ability to commit members and other vessel owners/operators to pay for charges which are extra-legal or beyond the tariff as established by the State of Washington?

A: No. Vessels are required to pay, and PSP is required to charge, the full tariff costs as established by the state for pilotage services—not one penny more or one penny less. RCW 88.16.120. Every vessel must pay in full at the time of service, allowing for invoice and payment processing, and no private industry association has any authority to assert differently. Neither the pilots or their representative PSP nor the vessels or their representatives have any authority or ability to commit vessels to being liable for any charges for any pilotage service which are not included within the four corners of the tariff which is in place and applicable at the time that the pilotage service is provided.

Q: Does anything prohibit PSP from deciding to amend its own By-laws or its Retirement Program Agreement to change how its members choose to fund their internal deferred compensation agreements amongst each other?

A: No, nothing other than the restrictions on amendments included in their own By-Laws and Retirement Program Agreement. Nothing more than a vote of pilots is necessary to amend their By-Laws, and nothing more than a vote of pilots and retired pilots is necessary to change plan benefits in the PSP Retirement Plan.

Q: When the Commission adopted the current tariff in the prior rate case, did the Order include a specific funding provision methodology or funding formula based on the specific benefits, provisions, or asserted liabilities of the Amended PSP Retirement Program?

A: No, the Commission approved the retirement costs as an expense, precisely as presented and requested by PSP without any further adjustment or description of a funding methodology. However, the Commission's Order in the prior rate case did include directions to address significant concerns raised by the UTC Staff and PMSA.

Q: In your opinion, does any part of the Commission's Order in the prior rate case or the provision of the tariff as finally adopted in any way limit the independent authority of the members of PSP and its retirees from maintaining, adopting, amending, or concluding their own deferred compensation, benefits, or retirement programs?

A: No.

Q: Is the State of Washington obligated to fund the private PSP Retirement Program?

A: No, the legislature has specifically and explicitly taken steps to preclude the state from taking any liability for the private obligations regarding retirement entered into by and among PSP members. Under RCW 81.116.020, while the UTC "may consider pilot retirement expenses" as an element of the tariff, which includes consideration of funded SEP-IRA plans, "under no circumstances shall the state be obligated to fund or pay for any portion of retirement payments for pilots or retired pilots."

2. PSP's proposal to shift 100% of all past, present, and future retirement expenses to ratepayers in a new surcharge is unfair, unjust, and unreasonable.

Q: Please describe PMSA's position with respect to PSP's proposed retirement surcharges.

A: We adamantly oppose both proposed retirement surcharges. PSP unreasonably and without explanation seeks to completely shift 100% of its retirement costs to ratepayers through these surcharges, both its existing liabilities associated with its current pay-as-you-go retirement plan and all the costs associated with its proposed future multiple-employer defined benefit plan. PSP envisions a future where it has no incentive to manage its costs, no incentive to limit benefits, and no limits on the amount ratepayers are required to contribute to support its defined benefits plan. It's an open-ended blank check.

Q: What are the two surcharges proposed by PSP?

A: The two surcharges are Automatic Adjuster #4 (resulting in Surcharge #4) and Automatic Adjuster #5 (resulting in Surcharge #5) identified at Exhibit IC-01T 31:7-13. Surcharge #4 would fund the cost in a year of the entirety of the existing pay-as-you-go retirement benefits paid to PSP retirees and possibly also fund the retirement payments of existing pilots. Surcharge #5 would fund the costs of a future fully defined benefit pension plan.

Q: Please describe how these are different and why PMSA is opposed to each.

A: These surcharges raise numerous issues.

Surcharge #4 are increases in the costs of pilotage for current and future vessels based on the deferred compensation that was previously earned by pilots in previous years and paid for by the vessels to whom they provided that service. This situation is analogous to the callback liability situation addressed by the Commission the prior rate case and should be treated under the same accounting principles. These liabilities incurred in the past should not be transferred to future vessel ratepayers. Section (a) below lays out these issues.

With respect to Surcharge #5, we are opposed to the establishment of a new defined benefit plan where there are no pilot contributions, no pilot incentives to manage costs, and unlimited liability for ratepayers. The combination of the defined benefit pension which ignores all IRS limitations on both contributions and benefits and does not require pilot contributions for any portion of the plan funding would be a monstrous new cost to impose on future vessels. Section (b) below lays out these issues.

With respect to both, to the extent that they are intended to offset existing pilot expenses, they would require adopting a new DNI adjuster to reduce DNI by the amount that current expenses or the present value of future expenses are transferred to the ratepayer via a surcharge. Section (c) below addresses this issue.

a. Surcharge #4 should be denied because PSP's existing retirement plan is a deferred compensation agreement among independent contractors who have already been paid for the completion of their work at the time of their assignment.

Q: How does Surcharge #4 relate to the existing PSP Retirement Program?

A: Surcharge #4 would collect new revenues from vessels that are intended to fund the cost of the existing pilot retirement liabilities.

Q: Does the PSP Retirement Program create deferred compensation by distributing current tariff revenues paid by vessels for current pilotage services?

A: Yes, as described in the 2021 PSP Financials, the "[r]etirement payments to eligible recipients are made from currently earned PSP income," which income is derived from the tariff Exhibit JJN-02, at 16, Note 8.

Q: Why is it important to identify that PSP's Retirement Plan is a deferred compensation agreement made among the pilots themselves and paid out of current revenues?

A: As PSP is an association of individual independent contractors they can and do organize themselves to share collective revenues and collective costs. Implicit in this organization among themselves, the individual pilots will make deals and arrangements on how to distribute their revenue among themselves, including whether to take revenues when earned as compensation in the current year or whether or defer that compensation to a future year. Once such decisions about the distribution of revenues after their collection among the pilots have been agreed on by the pilots, then these deals have been memorialized in their By-Laws and their Retirement Program Agreement.

Q: Why is it important to recognize that vessels and ratepayers do not have management, input, or responsibilities with respect to how pilots choose among themselves how to manage their deferred compensation?

A: The tariff sets the full extent of the cost of pilotage for a customer at the time the service is provided. The transaction is simple and straightforward: the vessel customer orders a pilot from PSP, PSP provides a pilot, the pilot provides the pilotage service, PSP sends the vessel customer an invoice, and the vessel pays the invoice. That's the extent of the business transaction and the obligation of the vessel. What happens next to those revenues, for example how and when they are shared among the pilots, is completely immaterial to the ratepayer who has completed its obligation in paying its invoice.

A vessel pays the Commission-approved rates independent of whatever agreements may or may not exist at PSP, whether they are amended by PSP, or whether they are extinguished by PSP. There is no variable or provision in the tariff based on whether pilots' agreements for retirement benefits amongst each other or for themselves are funded, unfunded, defined benefit, defined compensation, single employer, multiple-employer, ERISA-compliant, or non-ERISA compliant. As far as the vessel is concerned, the service has been delivered and once the tariff rate designated for that service has been paid there are no further liabilities associated with that pilotage engagement.

Q: If the service has been provided and the current tariff rate has been paid for that service is there any other future "liability" associated with the provision of that service?

A: No, not to a ratepayer. If PSP has received payment for a pilotage service provided pursuant to the tariff, then there is no basis for the creation of any further liability to that vessel or any future vessel receiving pilotage services. In fact, any effort to collect any revenues other than those imposed exclusively by the tariff would be unlawful. RCW 88.16.120.

Q: Provided all of the above, why would a retirement surcharge be needed to pay for a retirement benefits "liability" that exists only among PSP's members for their own internal deferred compensation accounting purposes, and not a liability that can be further externalized to vessels?

A: There is no need for such a surcharge. PSP already determines how it wants to fund its own internal liabilities. PSP does this through the adoption of By-laws that direct how its current revenues are collected and pooled among all of the pilots and direct how these revenues are paid out to distributions, benefits and expenses. These By-laws can, but do not, set cash set aside in a separate fund for future liabilities or direct an accrual accounting for such liabilities. Those decisions occur solely and completely under the direction of PSP and its members. The tariff generates revenues from vessels per task performed, and how PSP members decide among themselves to share tariff revenues subsequent to the performance of that task and the payment by the vessel is not a variable in the tariff that can impose an additional liability on the vessel customer, present or future. If pilots agreed to distribute $104,300 to former pilots, as they did in 2021 (2021 BPC Annual Report, Exh. JR-06), that is their choice. And despite having many opportunities to choose other paths, PSP and its member pilots have continually chosen this path which reduces their DNI substantially. Faced with ever escalating unfunded retirement costs, it appears to us that PSP is simply trying to push these escalating costs onto industry and into perpetuity.

Q: Does the current tariff in place and approved by the Commission already include a provision for the costs of the deferred compensation program set up by PSP?

A: Yes, when PSP presented its case in the prior rate hearing, it asked for its costs to be covered pursuant to a pro-forma estimate of revenues needed which was based on the 2018 Pilot Financial Statements. The 2018 financials, at TP-190976 Exhibit JN-04 28:27, include the cost of "Puget Sound retirement" at $4,626,971.

Q: So, when a current vessel pays its invoice now, it includes revenues paid to PSP for the purpose of covering the current costs of the PSP Retirement Plan?

A: Yes, when a vessel pays its invoice, it is based in part on the costs of the PSP Retirement Plan. This is because these expenses were requested by PSP in the prior rate case, funded at the level requested by PSP and presented to the Commission by PSP. This just reinforces the same reasons I've stated above for why there is no justification that the actual vessel that received the service should be billed twice for the same service: because this is an unfunded retirement program, all payments under the current tariff are paying past liabilities for services of former pilots. The tariff established by the Commission sets the fees charged for a service and the level of that fee is based on the costs of providing that service, plus the unfunded current liabilities of PSP's own deferred compensation system.

Q: Should the tariff in a future year be increased through a surcharge to force an entirely new vessel to pay for the compensation earned by a pilot when providing a pilotage service to a previous vessel?

A: No, absolutely not. And for all of the same reasons that the actual vessel that received the service should not be billed twice for the same service. That fee was paid and the revenue distributed among the pilots at that time. There is no future liability as far as the customer is concerned. Future vessels should pay for the costs of providing service to future vessels, just as past vessels paid for the costs of providing past service to past vessels.

Q: Are there other reasons why a future vessel customer of PSP should not pay a surcharge for the costs of pilotage provided to past vessel customers of PSP?

A: Yes, and these reasons should lead the Commission to tackle these deferred compensation questions in the exact same manner as the Commission did in the prior rate case with respect to callback liabilities that were being accrued as deferred compensation by PSP.

As described in Order 09 regarding callbacks, the Commission agreed with Staff's recommendations for avoiding secondary vessel charges for these types of deferred compensation liabilities and addressed the reasoning why as follows:

- Generally, "[t]here is no basis for an additional charge to the vessel merely because the pilot defers his or her compensation for that service until retirement." Order 09 at ¶ 235.
- Full accrual method accounting should be utilized to properly record "liabilities in the period in which they occur" and "in order to properly attribute the costs to the vessel that caused PSP to incur the expense at the time the expense was incurred." *Id.* at ¶ 236. The transition to full accrual method accounting for the PSP Retirement Plan was not just limited to callback liability in the prior Order. At ¶ 191, one of the specific purposes of directing PSP to initiate discussions regarding the pilot retirement plan was to develop a plan to transition to full accrual accounting for the retirement plan.
- Foundational rate-setting principles establish that "the principle of cost causation assigns costs to those ratepayers who cause the expense to occur" (citing *WUTC v. Puget Sound Energy,* Dockets UE-190529 and UG-190530 (consolidated) ¶ 484) and that all "[v]essels should pay for tariff rates that appropriately reflect the cost of maintaining compulsory pilotage in the Puget Sound pilotage district." *Id.* at ¶ 237.
- Intergenerational inequity problems should be avoided consistent with *WUTC v. Puget Sound Energy,* Dockets UE-170033 and UG-170034 Order 08 ¶ 131, in order to avoid a "practice [which] requires vessels to subsidize PSP's decision to overdistribute revenue in earlier years," and to avoid a situation where a vessel finds itself "compelled to pay pilotage rates that include non-working pilots who earned callback days [deferred

compensation] from assignments that may have occurred years earlier." ¶ 238.

Q: Are there other concerns raised in the prior rate case that remain of issue here with respect to Surcharge #4?

A: Yes, one additional issue is a legal claim that is unique to maritime commerce under the Tonnage Clause of the United States Constitution. It dovetails with the question of whether the charge is meant to approximate the actual cost of the service being provided to a vessel or whether a state is attempting to institute a charge against a vessel in international or interstate commerce that is not based on the costs of providing services to the vessel. The issue of whether such charges would violate the Tonnage Clause was raised in our briefing in the last rate case. TP-190976, PMSA Initial Brief, ¶ 66. I am not an attorney and cannot provide any opinions on this point other than to identify it as an issue that the Commission might not regularly run across in its ratemaking. It is an issue of particular concern in this ratemaking because this case would or might result in an act by the State of Washington to fix the costs for vessels for the privilege of entering and lying in a port, and that is the exact situation to which the Tonnage Clause is applicable.

b. Surcharge #5 should be denied because it is a blank check for future pilot retirement liabilities with no benefit limitations, incentives for pilots to manage costs, or requirement for pilot contributions.

Q: How does Surcharge #5 relate to the proposed new PSP multiple-employer defined benefit retirement?

A: Surcharge #5 would establish a surcharge in excess of existing rates to generate new revenues from vessels that are intended to fund the cost of the future pilot defined benefit retirement liabilities.

For purposes of this testimony, I am assuming Surcharge #5 would tie to deferred compensation for future pilotage services only, not for transitioning to a new defined benefit plan future liabilities to existing retirees and their spouses or already liabilities for current pilots' past service. That said, it is not entirely clear what PSP is proposing. To the extent PSP proposes to transfer its liabilities for past service from its unfunded Retirement Program to a new plan covered by Surcharge #5, the same problem with retroactive ratemaking arises as discussed above with respect to Order 09 regarding callback liability and Surcharge #4.

Q: Does PMSA support this proposed new pilot retirement benefit?

A: No, and that opposition is described in more detail in my testimony below.

Q: Does PMSA oppose Surcharge #5 because of its opposition to the proposed new pilot retirement benefit?

A: In part yes, and in part no. We certainly have concerns with the underlying plan that inform our opposition to this surcharge. For example, as proposed it is impossible to ascertain the actual costs of the implementation of this plan, and PSP does not adequately explain the costs with any detail or specificity. PMSA's actuary believes the estimates of costs are substantially under-estimated. Because Surcharge #5 would cover all costs to fund the new retirement plan, all these costs would be paid by ratepayers. As long as we do not know what those numbers are, we will remain opposed to the imposition of this surcharge.

Another issue with Surcharge #5 that is inexorably intertwined with the underlying structure of the proposed new retirement plan is that PSP seeks to establish new defined benefit liabilities that are not subject to either the IRS contribution limits or the IRS benefit limits. That amounts to a blank check on total retirement growth forever on ratepayers because this is proposed to be a defined benefit plan and not a defined contribution plan. PMSA will not agree to surcharges associated with a plan that does not limit ratepayer exposure to IRS benefit and contribution limitations.

And, no, in part, because we have fundamental issues with this 100% surcharge concept even if we agreed with fundamentals of a retirement plan transition proposed by PSP. PSP was directed by the Commission in the prior rate case to consider the role of pilot contributions in the establishment of a new plan, it refused to do so, even though this transition is exactly where additional pilot contributions make the most sense.

c. If any retirement surcharge is enacted, the Commission must adopt a complementary adjustment to equally reduce pilot DNI.

Q: Why should the enactment of retirement surcharges result in complementary enactments of adjustments to reduce pilot DNI?

A: Under the existing plan, current pilots pay for, and PSP accounts for, its retirement plan as an "expense." As a result, as the expense for pilot retirement increases, the net revenues left over for distribution to pilots decreases, so DNI is reduced. As noted above, this is specifically and intentionally how PSP has set up its distributions amongst itself and how it has chosen to distribute its own revenues.

Q: How did this internal distribution of current compensation and deferred compensation look in the 2021 PSP Financials at Exhibit JJN-02?

A: Based on the 2021 PSP Financials, the total "Puget Sound retirement" expense was $5,517,478. (Exh. JJN-02 29:24). Total pilot DNI is represented as "Annual earnings after deductions" pursuant to the table at Exhibit JJN-02 at 24-27, which totaled $15,643,382. After distribution, this resulted in a per-pilot DNI for most pilots (i.e. those credited with 365 "days of service" in 2021) of $295,616. The cost in 2021 to current pilots for deferred compensation, the unfunded defined benefit system, was $5.5 million, or $104,265 per pilot.

Q: How would this adjust DNI?

A: If deferred compensation expenses were $0 in 2021, pilot DNI would have increased to $399,881, an increase of DNI of approximately 35%.

Q: Is this the basis for an adjustment to DNI if Surcharges #4 is adopted?

A: Yes, if Surcharge #4 is adopted the adjustment would need to be replicated every year to account for the surcharge being substituted for pilot expenses being taken off the books. Otherwise, the DNI would not be an accurate result of cost causation accounting and would result in a windfall in DNI to the pilots.

Q: Is this the basis for an adjustment to DNI if Surcharge #5 is adopted?

A: No, while Surcharge #4 is dealing with existing expenses of retirement benefits already incurred and on the books of PSP, Surcharge #5 is a prospective liability surcharge, so it would need to be calculated based on the value of future PSP savings. But this distinction is subject to the caveat above about my assumption that Surcharge #5 is not deferred compensation for past service; as noted, this is not entirely clear.

Q: How should the Commission calculate this adjustment to DNI?

A: I am not an accountant so I don't know how an accountant would calculate the adjustment, but the concept is very straightforward even if the accounting is not. The Commission would need to look at the future plan savings and then take those into account as an adjustment to DNI of these savings. For example, PSP's actuary estimated that the potential plan savings of switching to a funded plan from an unfunded plan "[u]nder the alternative fully funded defined benefit plan scenario," would result in "savings of approximately $118 million." Exh. CRW-01T 3:22-26. If this amount is accurate, DNI should reflect these savings and then be adjusted down so that ratepayers are not paying for liabilities that no longer exist, or that PSP has chosen not to undertake.

Q: Why is this adjustment necessary?

A: Because without an adjustment, future expenses would also create a windfall for pilots if these expenses were transitioned off the pilots' balance sheet and to ratepayers through a surcharge. The savings estimate of PSP' actuary of the transition contemplated by PSP is approximately $118 million. But these savings are only available if someone pays for the plan transition; to avoid this windfall the party that finances the transition should get the benefit of the savings. If PSP were proposing to pay 100% of the cost of the transition, then it would be entirely fair for PSP to keep the predicted savings of $118 million in the form of reduced retirement expenses and higher DNI. However, through Surcharge #5, PSP proposes the opposite: PSP seeks a surcharge that forces ratepayers to pay for 100% of the cost of the transition but then pockets the predicted $118 million in savings for themselves.

This is just one of the reasons why PMSA is opposed to this blank check surcharge. By proposing a surcharge where ratepayers are shouldering 100% of the costs but not proposing any future DNI adjustments, PSP is trying to get both the benefit of the surcharge in the short-term and pocket the $118 million in savings in the long-term as a windfall profit.

3. PSP's proposal to adopt a new multiple-employer defined benefit retirement plan in this rate case is undeveloped, speculative, premature, and leaves unaddressed significant costs, risks, and future liabilities for ratepayers.

Q: Please describe PMSA's position on PSP's proposal to adopt a new multiple-employer defined benefit retirement plan.

A: PMSA opposes the adoption of a new multiple-employer defined benefit plan for PSP at this time. The multiple-employer defined benefit plan model is untested and novel, and the plan's structure, costs, legality, and administrative burdens all raise significant questions that PSP is not prepared to, or refuses to, answer. As PSP has demonstrated that it chose this plan with the intent of externalizing 100% of the existing costs of its current plan to ratepayers, we are especially concerned that under the proposed plan and surcharges, PSP will have absolutely no incentive to manage costs, create efficiency, or limit eligibility.

Q: Does the PSP proposal for the creation of a new multiple-employer defined benefit plan address the problem of the existing costs of unfunded retirement benefits?

A: It is unclear whether this would address any of the most problematic expenses and liabilities identified by the Commission and the UTC Staff in the prior rate case. By presenting two options in its plan, PSP intended to address some of the liabilities that may be growing in the future but does not address the pervasive issue of funding the ongoing retirement owed to existing retirees.

Q: Just because PMSA opposes this plan, does that mean PMSA opposes a transition by PSP out of its current unfunded defined benefit plan?

A: No, we would like to support a transition out of the current unsustainable and unfunded and comparatively expensive pay-as-you-go defined benefit plan as such a transition plan should most likely reduce pilot expenses and reduce pressure on future tariffs to generate revenue unnecessarily. PMSA encourages PSP to honestly and soberly review the many potential options for PSP to transition out of its current system at the least cost to itself and to its customers. PMSA is supportive of efforts to explore these options with an approach that is not simply a vehicle to wholesale externalize and transfer pilots' internal deferred compensation obligations to their customers. I would also note that Mr. Noble, in his testimony at Exhibit CN-01T, makes suggestions as to additional options that PSP may consider.

Q: What are PMSA's concerns regarding the plan's structure?

A: We have many concerns, including the primary fact that PSP proposes a new blanket plan that ignores and makes no improvements in the treatment of existing retirement liabilities, and then treats all retirement benefits for currently active and all future pilots the same. Similar to those discussions with respect to callback deferred compensation issues, past, current, and future liabilities need to be handled differently. PSP's proposal does not explore or address many possible permutations that would allow for these different types of retirement issues to be treated differently and in a less costly manner.

Q: In PMSA's opinion, is a multiple-employer defined benefit plan well enough understood or defined to provide customers with certainty as to how the transition will be accomplished?

A: No, there is not clear guidance on how this transition would occur. The plan format that is being recommended is a novel type of plan, and PSP has presented no examples of any other pilotage system—or even any other non-pilot groups for that matter—that have successfully made the transition presented by PSP. I would defer to our actuarial expert, Mr. Chris Noble on the issues regarding this new plan type.

Q: How does PSP's testimony describe the authority for its proposed new retirement plan?

A: PSP's testimony (Exh. BJM-01T at 9) describes a multi-step process that involves requesting a determination letter confirming tax-qualified plan status and an advisory opinion from DOL regarding PSP as a plan sponsor to authorize PSP to adopt the proposed multiple-employer defined benefit plan under section 3(5) of ERISA. PSP's consultant also confirms that this was only recently made available under new rule interpretations by the US Department of Labor.

Q: Did PMSA's review the recent rule interpretations of the definition of "Employer" under Section 3(5) raise additional questions regarding the use of this rule by PSP?

A: Yes, PMSA is concerned that the defined **benefit** multiple employer plans under the new rule are unavailable as the regulations specifically limit the application of the new definition of employer in section 3(5) to defined **contribution** multiple employer plans, as described by the U.S. Department of Labor in the Federal Register. See Exh. MM-54 (84 FR 37508). For example, under the new section 3(5) rules:

- §2510.3-55 "Definition of Employer" only specifies such that "**persons may act as an employer within the meaning of section 3(5) of the Act in sponsoring a multiple employer Defined Contribution pension plan** (hereinafter "MEP")."

- 84 FR at 37512 (with emphasis):

> "… Although the term "multiple employer plan" can refer to a variety of different kinds of employee-benefit arrangements, this final rule addresses only two kinds of arrangements: Sponsorship of a MEP by either a group or association of employers, or by a PEO. **The final rule is also limited to defined contribution plans, as defined in section 3(34) of ERISA. The final rule does not cover welfare benefit plans or other types of pension plans**.
>
> **Some commenters recommended expanding the scope of the Proposed Rule so that the final rule would cover other employee benefit plans. These commenters mentioned** life, disability, and **defined benefit pension plans in particular**. At the same time, however, other commenters recommended that this rulemaking project remain limited to defined contribution plans. These commenters stated that different issues might arise under different employee benefit plan structures and different benefit options. These commenters preferred that the Department continue a discussion with interested parties on whether and how to

> implement a future regulatory expansion to cover these other employee benefit plans. **After thoughtful review of these comments, however, the final rule is limited to defined contribution plans** because the Department believes that consideration and development of any proposal covering other types of pension and welfare benefit plans or other persons or organizations as plan sponsors would benefit from public comments and additional consideration by the Department.

Q: Have you asked PSP to clarify its understanding of the law? And, if so, what have PSP's responses been to your questions regarding these issues?

A: As described in the testimony of PMSA's actuary, Mr. Chris Noble, PSP's own actuary and pension counsel have refused to answer any of our questions in discovery about everything from very basic and foundational issues to high-level and specific theoretical situations. See testimony of Chris Noble, Exh. CN-1T, Exh. CN-4.

Q: What does PSP's testimony say regarding these interpretive issues about the application of Section 3(5)'s "employer" definition?

A: The testimony of PSP's retirement attorney Bruce McNeil regarding this issue is that "[b]ased upon my discussions this year with representatives of the IRS and the Department of Labor who would be involved in responding to our request for an IRS determination letter and the determination of the status of PSP as the sponsor of the MEP under section 3(5) of ERISA, and my expertise in the governing law under the Code and ERISA, I am confident that a favorable determination letter approving the tax-qualified status of a PSP sponsored MEP would be issued." Exh. BJM-01T 9:17-23.

Q: Is this a reassuring answer to PMSA in light of the clear language of section 3(5) stating that this type of defined benefit plan is not authorized to be used under this rule revision?

A: No. Undocumented discussions between a PSP consultant and unnamed representatives from IRS and Department of Labor are not a sufficient basis upon which the Commission can commit ratepayers to a specific path with over $100 million of expenses hanging in the balance. The Commission should not be asked to approve this novel plan based on a personal phone call accompanied with no affirmative writing on the subject, especially when the claim runs counter to the plain language of the Federal Register.

We are perplexed by the approach of PSP to this issue, which is seemingly cart-before-the-horse. The Commission shouldn't be asked to act first on the question of the approval of PSP's proposed retirement plan on the basis of the promise that PSP will ask the IRS and Department of Labor as to the legality of the plan after its approval. Instead, the better practice would be for the Commission to direct PSP to either select a traditional retirement plan type or, if it intends to use a new, novel, and unproven retirement plan type, then PSP should file and be in receipt of whatever advisory opinion is necessary before the Commission is asked to act on a proposal. It is critical to assure both the Commission and ratepayers that the plan is lawful and to assess the actual costs of the plan and its administration consistent with an advisory opinion, especially since PSP has now said that it intends to seek such an advisory opinion in any event. A copy of the Department of Labor's ERISA Advisory Opinion Information Page is attached as Exhibit MM-55.

Q: Are PSP's proposed contributions and benefits under the proposed new defined benefit contribution plan consistent with the IRS limits on plan contributions and benefits?

A: No, PSP apparently seeks to create a plan which would require significant contributions and benefits in excess of both the contribution limits set by ERISA and enforced by the IRS and the benefit limits set by ERISA and enforced by the IRS. I am not a retirement expert and this evaluation is further explained by the testimony of our actuary, Mr. Noble, at Exhibit CN-01T.

Q: What is PMSA's opinion regarding the application of these limitations?

A: PSP has not described why ratepayers should be expected to fund retirement contributions or fund retirement distributions at levels in excess of the federal tax limitations, and PMSA would object to customers being expected to do so. Much like other aspects of the pilots' deferred compensation, if these individual independent contractors want to get together to trade money, assignments, vacation time, or other obligations among themselves after they have their invoices paid by vessels, that is up to them. And as an internal matter, if they would like these levels to exceed the federal tax limitations, we have no objection to that. But when they try to externalize the costs of these private arrangements to their customers in the guise of a future tariff increase, it is unfair and excessive to ask ratepayers to exceed the amounts imposed as federal tax limitations.

This is an important principle for us in this transition period because PSP is attempting to transfer its own internal defined benefit plan benefits which were never subject to any ERISA, IRS, or Pension Benefit Guaranty Corporation (PBGC) limitations or rules into an environment with numerous complicated and technical rules and limitations. Now that the pilots want the benefits and protections of ERISA, they should also live by the rules and limitations that are in place to deliver the law's benefits and protections. PMSA believes that the old adage applies here that one should not be allowed to hide under the cloak of protection offered by the law, but then cast it off when the duties imposed by the same law become burdensome.

Q: Why is it important to get these decisions correct before action is taken by the Commission on a plan transition?

A: As identified by the PSP actuary, his initial estimates regarding the scale of the retirement benefits that are subject to these rules are in the range of $337 million to $472 million over the next 50 years. Small mistakes or miscalculations can result in changes to pilotage expenses or ratepayer costs of over $100 million. Delays in implementation could push these expenses into different rate years, with unintended results and consequences. Given the amount of uncertainty associated with PSP's proposal as identified by our actuary Mr. Noble, it is PMSA's opinion that this plan is not ready for Commission consideration and there are other options to consider.

4. PSP actuarial calculations for 2022 are significantly incorrect, already off by 20% when compared with the 2022 PSP pro forma, underestimating ratepayer costs.

Q: Are PSP's cost projections and proposals internally consistent?

A: No.

Q: Are the actuarial projections of PSP's retirement proposal consistent with PSP's pro forma calculations?

A: No. The "Puget Sound Pilots Retirement Study – Estimated 50-Year Cost Projections" presented by Mr. Wood (Exh. CRW-05) started its cost projections for the options with three different proposals with the following 2022 "Contributions": $5,416,000 or $5,281,000 or $5,410,000. The pro forma PSP retirement payout in 2022 was $6,419,916. Exh. WTB-05.

Q: What is the relative size of this discrepancy?

A: The pro forma predicts retirement contribution costs for 2022 between 18.5% and 21.5% higher than the 2022 payout figures used in the PSP "Estimated 50-Year Cost Projection."

Q: Are there other discrepancies between the PSP actuarial study assumptions and the pro forma?

A: Yes, while the pro forma projects costs based on 56 licensed pilots, the PSP Retirement Plan "Actuarial Methods and Assumptions" assumes that the "Number of Active Pilots" is 52. Exh. CRW-04.

Q: What is the impact of these discrepancies?

A: Year one is the base year calculation for the 50-year cost projection, so it has particular importance with respect to total future estimated costs of the PSP Retirement Plan. As the starting point, it is mathematically significant given the ripple effect carried through all the calculations carried forward over 50 years. Accuracy is essential, and even minor discrepancies can have significant impacts on projected costs. To the extent that the 2022 contributions are already off by more than 20%, this is a significant error. To the extent that it is an underestimation, it risks an approval under the assumption that costs would be much lower than they actually are, resulting in much higher costs than expected, whether to PSP or to ratepayers.

Q: As of now, does PSP already know the full amount of the 2022 contributions to pilot retirements, aside from the pro forma and the retirement plan documents submitted with testimony dated June 29, 2022?

A: Yes, PSP knows at this point exactly what they paid out in 2022 because it has already happened. Moreover, as the revised pro forma at Exhibit WTB-05 was submitted in the Order 04 compliance filing on October 31, 2022, it also had the first three fiscal quarters of 2022 to rely on. PSP has not sought leave to correct or update the retirement study and its projections, even though PSP must know that it is either wrong or inconsistent with the pro forma, or both. The Commission should not approve any future action in reliance on an actuarial study which it knows is inaccurate and that PSP has not sought to update, correct, or make consistent with its own pro forma or its actual data.

Q: Was this discrepancy calculated or clearly disclosed in any work papers submitted by PSP pursuant to WAC 480-07-525(4)(s)?

A: No. Although PSP is proposing a radical change in the methodology for calculating the retirement costs of PSP, no work paper demonstrating how the calculations regarding retirement have been submitted. The only way to catch this significant disconnect in the actuarial report was to compare these amounts and projections across multiple pieces of testimony and exhibits.

5. PSP chose to establish a retirement plan without the benefit of ERISA protections.

Q: Is the current PSP Retirement Plan a defined benefit plan which is identified by PSP as subject to Employee Retirement Income Security Act (ERISA)?

A: To my knowledge, PSP has never administered the PSP Retirement Plan in a manner where it intended the plan to be subject to ERISA or its rules.

Q: By what actions of PSP can a non-pension expert observe the fact that PSP's Retirement Plan is not intended to be subject to ERISA?

A: First, PSP has generally made it clear in numerous sets of testimony during the course of this present rate case and the prior rate case, and historically over time at the Board of Pilotage Commissioners, that PSP is not the employer of the pilots and the pilots are not the employees of PSP. Furthermore, even though PSP files a partnership tax return, the individual pilots are not partners in PSP.

Q: Has PSP also allowed one of their employees, former Executive Director Walt Tabler, to participate in the PSP Retirement Plan which was established for pilots?

A: Yes.

Q: Even though the plan also covers an employee in addition to the pilots, does PSP maintain that it remains outside of ERISA's jurisdiction and reach with respect to the employee retirement benefits offered to Mr. Tabler?

A: I am unaware of any basis or argument on this subject ever being offered to the public or to ratepayers on this subject. And I am not an expert so I am unable to offer an opinion on it myself.

6. PSP has not disclosed the entirety of pilots' retirement compensation.

Q: Has PSP disclosed the entirety of its member pilots' retirement benefits and deferred compensation?

A: No, PSP has not disclosed whether or to what degree its members are also participating in supplementary retirement benefit and deferred compensation vehicles, such as SEP-IRA, 401(k), or other plans.

Q: To the best of your understanding, are individual pilot members of PSP eligible as independent contractors allowed under federal laws to establish individual SEP-IRA plans?

A: Yes, federal law allows self-employed and independent private contractors to participate in a SEP-IRA program. The SEP-IRA retirement funding vehicle was set up by the federal government specifically for the self-employed and independent contractors who are not employees.

Q: What is the incentive for PSP member pilots to participate in a SEP-IRA program?

A: PSP member pilots would establish and participate in SEP-IRA plans to take advantage of their associated tax savings and high contribution levels. These plans have very high tax-free contribution limits and are strongly recommended by financial advisors for those individuals that qualify, and those contributions can be invested to grow significantly and tax free. In 2023, the tax-deferred maximum contribution is $66,000 dollars, and with tax rates up to 35%, there are substantial tax deferrals savings.

Q: What are these limits and how would they apply to members of the Puget Sound Pilots?

A: If pilots collectively are taking advantage of these tax-free contribution limits, they would be allowed to make individual contributions totaling over $3.5 million per year to their SEP-IRA plans ($66,000 times 54 pilots equals $3,564,000 in contributions). While an exact figure would rely on the pilots' effective tax rate, the tax savings associated with $3.5 million of SEP-IRA contributions would be significant.

Q: To the best of your knowledge, do PSP member pilots participate in SEP-IRA plans?

A: While I have no direct evidence of the participation of any specific PSP member pilots in SEP-IRA plans, this participation has been confirmed in numerous conversations in public and private settings regarding retirement over the years. Given the size of pilots' annual income it would be surprising if all or vast majority were not taking advantage of the SEP-IRA benefit in order to minimize their tax liabilities while providing a significant retirement benefit.

Q: Are there other retirement benefits beyond the PSP Retirement Plan and SEP-IRA that individual pilots participate in?

A: Pilot contributions to social security and self-employment taxes paid by individual pilot corporations would also be derivative from pilot tariff revenues, as required by federal law. The rates and times at which those benefits and payments are received by retired pilots are dependent upon individual situations.

Q: Are there any other retirement benefits that are available to PSP pilots in addition to the PSP Retirement Plan, SEP-IRA, and Social Security?

A: Yes, most pilots have had a substantial career elsewhere in the maritime community prior to joining PSP. And as employees of the companies or entities that previously employed them, for instance as masters in the Washington State Ferry system or service in the U.S. Navy or with ocean carriers or tug companies, most pilots would have earned some specific form of retirement or pension benefits prior to their career as a PSP pilot. These benefits and payments depend on individual situations and are earned outside of their piloting career and without any revenues generated by the tariff.

Q: In addition to the PSP Retirement Plan, SEP-IRA, Social Security, and any previously earned retirement or pension benefits from pre-PSP employment, are there any other retirement or deferred compensation benefits that are paid to a PSP pilot?

A: Yes, under the PSP By-laws pilots are equity participants in PSP as each individual licensee is required to "buy in" to the PSP partnership structure. This equity participation in PSP of each individual pilot is then paid out over several years, presumably as a long-term capital gain on their investment in the PSP business, when that pilot retires.

Q: So, the current PSP system facilitates pilot retirement benefits from at least 5 separate sources?

A: Yes, PSP pilots are likely eligible to receive at least 5 retirement payments, including from 1) the PSP Retirement Program, 2) the pilot's SEP-IRA, 3) Social Security, 4) the retirement program from a pilot's pre-PSP career employer, and 5) the PSP equity "buy out" upon retirement. All of these except any retirement(s) from former careers have direct nexus to the tariff as each is dependent upon revenues generated by tariff.

7. PSP deliberately and repeatedly ignored the explicit directions of the Commission in the prior order regarding the pilot retirement program.

Q: In its Order in the prior rate case what did the Commission require from PSP prior to the filing of the next general rate case with respect to the PSP Retirement Program?

A: The Commission mandated that several procedural and substantive prerequisites be executed by PSP prior to the initial filing of the next general rate case at ¶¶ 191–193. These read as follows:

> *191*. We . . . order PSP to initiate discussions for the purpose of developing a plan to transition to a fully funded, defined–benefit retirement plan, as well as full accrual accounting. By way of guidance, the retirement plan discussions should include, as PSP proposes, a comprehensive stakeholder evaluation and a participation study. We further require the discussions to address whether active pilots should be required to contribute directly to PSP's retirement fund.
> *192*. We decline, however, to "broker" the dialogue, as PMSA requests. The discussions should be conducted as workshops facilitated by a mutually acceptable third party with expertise in retirement planning, such as an actuary, and should be concluded prior to PSP's next general rate case. To maintain fairness and avoid any appearance of preapproval, the Commissioners will not participate in the workshops but will evaluate any final recommendations proposed for review and approval. Specifically, any agreements, recommendations, or contested issues that arise from the workshops, and PSP's responses thereto, should be included in PSP's initial filing in its next general rate case.
>
> *193*. We also deny PMSA's request to require PSP's participation study to consider outcomes other than a defined–benefit plan. The workshop participants, rather than the Commission, should determine the scope and breadth of the study. PMSA is welcome to advocate for the inclusion of other retirement options in PSP's study, but we are not persuaded that prescribing its contents at

> this juncture, without the benefit of initial stakeholder discussions, would be appropriate or productive.

These requirements were reaffirmed in the Order's Conclusions of Law at ¶ 463:

> (20) PSP should be required to initiate discussions as described in paragraphs 191 through 193 of this Order to develop a plan to transition to a fully funded, defined-benefit retirement program and full accrual accounting. Any agreements, recommendations, or contested issues that arise from the workshops, and PSP's responses thereto, should be included in PSP's initial filing in its next general rate case.

Q: Did PSP follow the Order's instructions, including all requirements and guidance from ¶¶ 191-193, 463?

A: No, PSP did not follow the Order in many respects.

Q: Did PSP initiate a discussion that included "a comprehensive stakeholder evaluation and a participation study," as PSP proposed in the prior rate case?

A: No. PSP did not conduct a comprehensive stakeholder evaluation or a participation study. If it did, it did not include PMSA in its preparation, it did not provide a copy to PMSA prior to filing, and it is not included as an exhibit to any of its testimony in this current rate case. This was a requirement that PSP asked for in the prior rate case: as described by PSP in its initial post-hearing brief, it advocated for "three way negotiations involving the pilots, industry, and the rate-setting body" at ¶ 113, and at ¶ 116:

> Mr. Kermode identified both the size and makeup of the PSP 'PayGo' plan as a major, if not the major issue in this proceeding, both presently and prospectively. PSP similarly believes, along with callbacks, there is no more significant accounting issue in the ratesetting transition to the UTC. **Thus, only a comprehensive and broad-ranging universal stakeholder evaluation and participation study, informed as well by knowledgeable specialists in the pension and retirement field, is required before any alternative to PSP's current plan before any change is considered. Indeed, PSP believes the continuing viability, stability and ultimately, safety, of our marine pilotage system depends on that vital collaborative process**.

(Emphasis added).

Q: Did PSP ever initiate a collaborative process with PMSA with the goal of creating a comprehensive and broad-ranging universal stakeholder evaluation and participation study?

A: No. No such process was ever initiated, nor did we get invited to participate in the development of any study.

Q: Did PSP ever discuss or propose a plan for a transition of the treatment of pilot retirement costs from its current accounting methodology to a full accrual accounting methodology?

A: No. No such plan was ever presented in any materials to PMSA.

Q: Did PSP ever give any consideration to the requirement that the discussions "address whether active pilots should be required to contribute directly to PSP's retirement fund"?

A: No. PSP refused to include any conversation regarding individual pilot contributions to their own retirements and would not consider any options which would require such a conversation. PSP had already decided on its preferred path prior to initiating any conversations with PMSA, and it focused exclusively on 100% industry-funded contributions to retirement. Exh. CPC-12 at 3 ("As stated by PSP representatives at both the March 2 and April 13 stakeholder sessions, PSP is committed to seeking full funding in the pilotage tariff for the Puget Sound pilotage district for the pension benefits promised to retirees and to all working pilots at the time of initial licensure.").

Q: Has PSP provided in its Petition a report from the required workshops that contains the "final recommendations proposed for review and approval. Specifically, any agreements, recommendations, or contested issues that arise from the workshops, and PSP's responses thereto" which the Commission directed "should be included in PSP's initial filing in its next general rate case"?

A: No. Not only was any report like this missing from PSP's initial filing, but PSP directly refused to work with PMSA on the creation of such a report and called such collaboration as a "waste of time. Exh-CPC 14 at 2-3 ("…we believe it would be a waste of time to attempt to draft some sort of joint stakeholder report to the UTC regarding our negotiations.").

Q: Has PSP presented a report with "responses by PSP to contested issues that were identified in workshops"?

A: No. Most importantly, not only was there no report with responses by PSP to contested issues, PMSA was not even given the opportunity under the timelines and restrictions imposed on the stakeholder process by PSP to effectively raise and contest issues, as PSP declared an "impasse" and rushed to file its Petition before any substantive conversations were held.

Q: Did PSP provide an opportunity for PMSA to advocate for the inclusion of alternative retirement options in PSP's any study that was going to be produced as a result of workshops?

A: No.

Q: When did PSP hold the first substantive meeting with PMSA as required by the Commission's Order?

A: Not until March 2, 2022.

Q: Did PSP ever set up any pension workshops as a result of initiating this discussion?

A: No, and when PMSA at the initial meeting on March 2 proposed that the parties establish a schedule of workshops, PSP rejected PMSA's proposal for workshops.

Q: Did PSP ever offer PMSA the engagement of a mutually acceptable third party with expertise in retirement planning, such as an actuary, to facilitate any workshops before it filed its Petition?

A: No, PSP never allowed for the engagement of the services of such a person nor sought any stakeholder input on who might serve in that role. Rather, PSP hired its own actuary prior to the initiation of the workshop process without providing any opportunity for stakeholder input. PSP also made clear that it intended other parties to engage separate actuaries rather than a mutually acceptable third–party actuary.

Instead of a workshop–style process run by a mutually acceptable third–party actuary, PSP proposed a formal mediation and went so far as to select a formal mediator of its own choosing and even set a formal mediation calendar without so much as notifying PMSA or any other stakeholders. PMSA objected to the PSP formal mediation process for the March 2, 2022 initial stakeholder meeting and instead recommended an informal initial meeting of the parties to discuss the process and how to move forward consistent with the Commission's Order.

Q: What did PMSA propose to PSP at the initial stakeholder meeting of March 2, 2022?

A: PMSA supported initiation of the workshop process that was described in the Commission's order. Specifically, PMSA proposed the following (Exh. CPC-08):

> As for the first meeting, we propose scaling it back to focus on following the UTC Order. In our view, this should be a meeting to plan workshops, not an actual workshop. I appreciate your letter a few workdays before a first meeting but also need to

> point out that there has not been agreement to proceed with a PSP hired actuarial analysis . . .
>
> For this first meeting, we propose discussing how to conduct "a series of workshops facilitated by a mutually agreeable third party . . ." and how we will go about identifying ". . . agreements, recommendations, or contested issues that arise from the workshops. . ." (quotes from UTC Order). If the mutually agreeable third party is an actuary we all agree to, great, but if not, we'd have to arrive at an agreement about that as well.

Q: What was PMSA's thinking at the time about how and why workshops would be held moving forward consistent with the Commission's Order?

A: As described in communications regarding workshops at the time, PMSA's position was that "[a]n exchange of the baseline set of perspectives would logically be the subject of a first workshop in the series which would help map out issues of agreement/disagreement setting the stage for follow-on workshops along with sufficient time for parties to properly and professionally prepare." Exh. CPC-11 at 1–2.

Q: What was PSP's response to PMSA regarding its proposal to hold these workshops?

A: PSP refused to discuss or consider the identification of a mutually acceptable third party to facilitate a series of workshops and instead dictated an agenda featuring PSP's actuary. In reply, at Exhibit CPC-11, PSP stated that:

> Given all of the work that has gone into planning this initial PSP Pension stakeholder meeting, we are not willing to scale it back to a meeting to plan a series of workshops. It is worth

> noting that the Puget Sound Pilots were assigned the responsibility in the UTC order 'to initiate discussions for the purpose of developing a plan to transition to a fully funded, defined-benefit retirement plan.' As part of the process to 'facilitate this transition,' PSP was required to conduct 'a comprehensive stakeholder evaluation and participation study,' which is exactly what PSP is doing . . . .
>
> As explained in my letter of February 24, at this first workshop PSP actuary Tiff Wood will make a presentation regarding the Milliman 50-year cost projections and the actuarial assumptions . . . ."

Q: How did this discussion proceed after PSP's objection to holding workshops with a mutually agreed upon facilitator?

A: PMSA reluctantly agreed to a series of meetings without a mutually acceptable third–party facilitator or actuary. But after multiple unproductive sessions in April without the benefit of a mutually acceptable third–party facilitator or actuary and in which PSP was actively advocating already for specific outcomes and conclusions regarding the PSP transition, PMSA decided that it would need to hire its own actuary to properly evaluate PSP's retirement proposals.

Q: Did PSP object to PMSA hiring its own actuary to review and evaluate the work of PSP's actuary?

A: No. PSP left PMSA with no choice but to hire a separate actuary. PMSA provided PSP with updates of its actuarial search and hiring progress during the month of May, and given how difficult the actuarial search proved to be, we considered ourselves lucky to find Mr. Noble and agree to terms with him by late May. At no time during this period did PSP object to these efforts by PMSA to acquire its own actuarial assistance or the delay in meetings which was necessary due to the need PSP imposed on PMSA to hire its own actuary. Exh. CPC-05 at 3.

Q: When PMSA hired its actuary did it inform PSP?

A: Yes. After our actuary was hired and able to do some preliminary review of the work done by PSP's actuary, I contacted PSP by email on June 6, 2022, with the request to collect some information to help "our actuary get through the work in a thorough and timely fashion." Exh. CPC-13 at 2.

Q: What response did you receive from PSP to the request for additional actuary information?

A: On June 7, 2022, we received an ultimatum from PSP shutting down whatever discussions were underway. PSP informed us that "[w]e must respectfully insist on PMSA providing its final position on any transition of the PSP existing pension to a funded pension no later than June 15." The email also said that PSP intended to "report to the UTC on what appears to be an agreement."

Q: Were you expecting this response regarding an agreement or a deadline of June 15, 2022?

A: No, we were absolutely blindsided by this ultimatum and the cessation of the process and also the assertion of having reached an "agreement." Why were we only given one week to wrap everything up without any notice or forewarning and get a "final position on the pension issues" by June 15? That was a real problem for us. Not only were we just in the early days of bringing our actuary on board the team and getting him up to speed with the entire plan and its history, but we had not even had the opportunity to form any informed positions on any of the PSP proposals yet. Not only was this process not proceeding as we had envisioned or in a manner consistent with the Commission's Order, but it was getting shut down before we even had an opportunity to offer any substantive input on various options or on any relevant aspects of the discussion in an open stakeholder forum. Given that we were just on the front end of the analysis of their actuarial report we were obviously not ready to sign off on any "agreement."

Q: Did you share this concern about the June 15 ultimatum from PSP in its June 7 email?

A: Yes, I responded to PSP almost immediately—within 2 hours that morning—to express our concern. As noted in my email of June 7, at Exhibit CPC-15 at 4, the June 15 deadline was "really quite a surprise," and I repeated that to sign off on a report to UTC on "an agreement" by the next week was "unexpected and not realistic." I replied, "If PSP was interested in getting this wrapped up by June 15th, we would have expected an earlier engagement and more collaboration on finding a mutually agreeable actuary and moving forward with workshops as was described in the Order."

I specifically stated to PSP that "[w]e obviously don't have any positions (final or preliminary) on any issues with specificity yet. This email string is case in point, we still need to have our actuaries communicate about baseline analytical issues," and that "[a]fter we have a final actuarial review on our end, then we can get to having an informed position, which is obviously key to agreeing on the facts that will then guide our workshops, getting us to a joint proposal if possible, or at least a listing of agreements and disagreements and starting to draft this written Report, signed off on by all of the parties."

With respect to the Report, I also added that if PSP was asking us to sign off on a final agreement for a report to UTC that as "a practical matter …if PSP has a draft Report, we would expect it to be shared ahead of time. It is important that if PSP is looking for stakeholders to review it and sign off on a "Final" position Report, that you have circulated that draft with us ahead of time." '

Q: Did you add anything else regarding working within the context of the Commission's Order in this response?

A: Yes, I specifically referenced "the old adage that if you want to go someplace fast, go alone, but if you want to go far, go together. It strikes me that your June 15th deadline is a request to go fast on your own. The UTC Order asked us to go far by working on this collaboratively. We hope we can go far too—and we know that it is in everyone's best long-term interest in doing a transition to a new retirement system right." Exh. CPC-15 at 5.

Q: What was PSP's response to your June 7 email asking for additional time for actuarial review and informed workshops, with the result being either a joint proposal or a draft Report to the UTC by all parties?

A: PSP's counsel sent me an exceptionally upsetting letter on June 8, a copy of which is at Exhibit CPC-14. In it PSP declared an impasse on negotiations. But that wasn't what was upsetting; I was upset by the aggressive accusations of bad faith and clear attempt to impugn my motivations. That was especially offensive. Only a day before, PSP was ready to report to the UTC that we had an "agreement" and wrap up the conversations. But now, because we told them that the June 15 ultimatum for final positions was unreasonable, PSP was alleging "that from the beginning PMSA has deployed a strategy of delay and has refused to negotiate in good faith."

The letter, which is particularly long and full of tortured logic and misrepresentations of the process that had occurred to date, concludes by repeating the claim that "PSP has made a good faith effort to engage with stakeholders on the pension issues as requested by the UTC. PMSA has not." With respect to engaging on a report to UTC, PSP concluded that "it would be a waste of time to attempt to draft some sort of joint stakeholder report to the UTC regarding our negotiations," and concluded by declaring that "[b]etween letters and emails, the record is quite clear and each party is free to submit a report to the UTC as it sees fit."

Q: What was PMSA's response to PSP's declaration of an Impasse?

A: PMSA's full response on June 9 by letter is at Exhibit CPC-15, which disputed that any impasse existed. PMSA confirmed it is "in a period of actuarial due diligence" and "proceeding in good faith and fidelity with the UTC workshop process," expressed its intention "to follow the UTC Order currently in place and to engage in workshops," invited PSP to return to a workshop process, restated its position of "endeavoring to stay within the scope of the Order's proscribed workshop process and also conduct its own actuarial review in response to PSP's independent process," and asked PSP for "a modicum of time during the current workshop period to do the same type of analysis that took PSP the better part of an entire calendar year."

Q: Did PSP respond to this letter by PMSA asking for the continuation of the workshop process?

A: No, while there were some communications between the PSP and PMSA actuaries in June 2022, we received no response to our letter. Then PSP filed its Petition initiating this general rate case on June 29, 2022.

Q: In your opinion, what are the ultimate consequences of the failure of PSP to follow the Commission's Order requiring a collaborative workshop process before filing its next general rate case?

A: The Commission-ordered workshops served both procedural and substantive purposes. PSP's failure to timely initiate the workshops, exclusion of parties from decisions, and decision ultimately to move forward without the work product expected as a result of the retirement workshops are a detriment to both the Commission's ratemaking and the parties in this proceeding. Procedurally, even if the workshops ultimately yielded no ultimate consensus on recommendations, the workshop process itself would have produced a record and work products that would have set clear and unambiguous facts and a clear picture of the issues in dispute or in agreement between the parties before the Commission.

PMSA's reading of the Order in the prior rate case was that the Commission wanted work products to be produced out of the workshops and included in the next general rate case. Not just competing testimony, but actual reports. We understood the Order to require PSP to produce three distinct components to these reports:

(1) An actuarial report which created a factual basis upon which actions by the Commission could be based. The actuarial report would both outline the future costs of the current Retirement Plan and various different scenarios upon which the costs or savings of alternative recommended plan options could be based, and if the parties could not agree on all actuarial conclusions and assumptions, to isolate the issues upon which they disagreed and why.

(2) A report describing the options available for reform of the PSP retirement system, including the costs and benefits of each option, and the legal and technical limitations for each, and if the parties could not agree on all options and their costs and benefits, to isolate the issues upon which they disagreed and why.

(3) A final recommendation on which of these alternative options should or should not be adopted by the Commission, including the parties' various opinions on the recommendations and where they were able to reach agreement and where they disagreed and why, including a requirement that PSP specifically address their reasons for accepting or rejecting PMSA's recommendations and why.

The Commission and this process are now missing these important reports. In my opinion, we are in this position now because PSP thought such reports were a "waste of time." As I told PSP before they terminated our workshop process, by opting to move ahead alone and prematurely file their general rate case, along with a motion to set an expedited schedule, and a petition for interim rate relief and request for expedited consideration, they were choosing speed over a quality work product. When faced with this choice, PSP also chose speed over the opportunity to file their petition in a way which was responsive to the Commission's Order. The short-shrift that PSP has shown for the Commission's Order and how it has treated PMSA as a participant in the workshops, has led me to conclude that PSP viewed this as a "check-the-box" process, and at the first opportunity to declare "impasse" it did so in order to get a rate case back at the Commission as quickly as possible. And now, PSP's petition suffers for the want of the reports that would have clearly detailed which facts are disputed and undisputed, which options are on the table, and clear directions on recommendations that were fully discussed and vetted in an educated way by all stakeholders.

Q: Are there any other deliverables that remain outstanding from these failed workshops?

A: Yes, because the proposals by PSP simply amount to a "run the clock" on the existing retirement plan and its benefits, the treatment for these liabilities as "expenses" remains on the books and there was no provision for the accrual accounting plan regarding the transition in the PSP proposal for these existing retirement liabilities.

Also, as discussed in my testimony with respect to expenses, the Commission ordered the parties in these workshops to address the inclusion of the former Executive Director's participation in the pilot retirement program as well. This was not discussed with any specificity before PSP declared an "impasse" and rushed to file the petition for this general rate case and also remains outstanding.

D. The PSP proposal to decrease rates for yachts is based on a false premise and should be denied on principle.

Q: What is PMSA's position on the proposed decrease in rates for small tonnage vessels, primarily motor yachts, as outlined by PSP?

A: PMSA opposes this because PSP's justification for the proposed rates revision is based on a false premise and a material omission regarding the underlying agreement that led to the proposed revision.

Q: What is the agreement you are referring to?

A: PSP claims it entered an agreement with Pacific Yacht Management (PYM) and Northwest Marine Trade Association (NMTA) regarding PSP's proposed pilot retirement plan.

Q: Did you personally attend stakeholder meetings to discuss pilot retirement?

A: Yes, I attended the stakeholder meetings held between PSP, PMSA, PYM, and NMTA.

Q: Were you aware of any agreement being reached among the other attendees?

A: No, this was a surprise. No one discussed that at any of the meetings. The PSP Petition provides neither the copy of any agreement, nor any report from a workshop detailing the terms of any agreement, nor any recommendations or summary of contested issues that arose from the workshops with PSP.

Q: Have you received any information about the agreement in discovery in this case? If so, do you have any opinions on the agreement between PSP and PYM and NMTA?

A: Yes, the deal is disclosed in the emails of Mr. Costanzo, PSP's Executive Director, with representatives of PYM and NMTA. Exh. MM-56. (PSP Response to PMSA DR 64 (PSP000508)). They confirm this was a *quid pro quo* deal: a tariff discount for yachts in exchange for support of the PSP pension proposal. *Id.* at 3. An email from NMTA representative Jay Jennings to Mr. Costanzo on June 20, 2022, summarizes it thus: "Thanks Charlie. Please lay out again the principles/position we'd be obligated to support. (IE **are you asking us to support the new tariff rate filing, or simply the yacht discount in exchange for pension transition?**)" *Id.* at 3 (emphasis added.) In response, Mr. Costanzo continues to confirm and lay out exactly what principles and positions it wanted PYM and NMTA to support as part of the deal. *Id.* at 1–3.

When asked directly about this in Data Requests, PSP denied ever having made this deal: "PSP denies that it agreed to the proposed reduction in rates for yachts in exchange for the agreement by PYM and NMTA to support the PSP retirement proposal." Exh. MM-57 (PSP Response to PMSA DR 133) The emails, however, speak for themselves, and PSP has presented no evidence to the contrary. In short, PSP negotiated a separate agreement with PYM and NMTA behind closed doors and outside of any collaborative or workshop process.

Q: Did PSP disclose this deal in its testimony as the basis for requesting lower rates for yachts?

A: No, Mr. Costanzo only said that rate increases “for foreign yachts” under the current tariff resulted from an “oversight” by the Commission and was inequitable. Exh. CPC-01T 51:15-17.

Q: Did Mr. Costanzo explain this “oversight” in response to a data request?

A: Yes, when asked to describe how an “oversight” was made by the Commission, Mr. Costanzo replied that “PSP does not believe that it was the intent of the parties, or by extension, the Commission, to impose an increase in pilotage rates for foreign yachts that nearly doubled rates under the prior tariff and was much more significant by percentage than the increase on all other vessels.” Exh. MM-57 (PSP Response to PMSA DR 130).

Q: Does this explanation make any sense in light of the proceedings in the prior case?

A: No. PSP did not make a mistake. PSP was very deliberate and pointed in its explicit intention to raise rates on yachts in the prior case.

Q: Is there an example of PSP testimony in the prior rate case that shows it was intentional?

A: Yes, please consider this table and testimony (Figure Z) from Capt. Stephan Moreno’s rebuttal testimony (TP-190976, Exh. SM-2T 12-14) describing why PSP’s proposed tariff was a more reasonable increase than the increase on certain vessels proposed in the UTC Staff Rate Design:

Vessel	G/T	Type	Current Tariff*	Staff Rate Design*	PSP Proposed Tariff (Year 1)*
Pioneer	499	Yacht	$2,609	$8,725	$5,766
Sea Owl	1494	Yacht	$2,210	$6,624	$4,786
ATB Dublin Sea	14935	ATB	$1,906	$4,522	$3,805
Global Round (Global Gold)	21158	BULK (S)	$2,021	$5,976	$4,547
Balao (Cap Pasado)	26412	CONT(S)	$2,294	$5,516	$4,620

TESTIMONY OF STEPHAN MORENO, Exh. SM-2T - 12 **Williams, Kastner & Gibbs PLLC** 601 Union Street, Suite 4100

Q: **Can you give another example of how the UTC staff prosed rate affects a yacht that utilize Pilotage service?**

A: Yes. For example, I will use the Yacht Pioneer and the Yacht Sea Owl from the test year data and use the UTC staff rate design policy as I did in the previous answer. The M/Y Pioneer would expect pilot service fee of $8,725, a 234.46 % increase, and the M/Y Sea Owl a fee of $6,624.30, a fee of 6624, a 199.74 % increase.

TESTIMONY OF STEPHAN MORENO, Exh. SM-2T - 14 **Williams, Kastner & Gibbs PLLC** 601 Union Street, Suite 4100

FIGURE Z

Q: **In this testimony, was it clear that PSP intended to more than double pilotage rates on yachts?**

A: Yes, PSP clearly intended that under its proposed tariff that the yacht *Pioneer* would have its pilotage rates more than double from $2,609 to $5,766 and the yacht *Sea Owl* would have its pilotage rate more than double from $2,210 to $4,786. PSP even pointed out that the PSP proposal to double rates on yachts was actually even more reasonable than the UTC Staff proposal, which would have further increased rates on yachts.

Q: Did the Commission act on PSP's proposed increase for yachts?

A: Yes, the Commission deliberately chose to implement the PSP rate structure instead of the UTC Staff recommendation. This was not an "oversight."

Q: What is your conclusion upon reviewing all the claims being made by Mr. Costanzo in his testimony about the need for a revision of the yacht rates being necessary to correct an "oversight"?

A: Mr. Costanzo's emails with PYM and NMTA show a very different reality from what he presents in his testimony. The truth is what NMTA very clearly understood: PSP was asking PYM and NMTA to exchange testimony in favor of PSP's retirement plan proposal (and in support of other PSP positions) in exchange for a break on the rates for yachts. This is more believable than Mr. Costanzo's testimony to the Commission that PSP's new rate request for yachts is just to correct an "oversight" by the Commission.

Q: Based on these facts, do you believe that PSP has presented an honest case for this tariff revision?

A: No, I do not, and I believe the Commission should deny this tariff adjustment as requested under false premises. In addition, when considering the proposed PSP retirement proposal, I respectfully request that the Commission discount any public comments or testimony by PYM or NMTA made in support of the PSP retirement plan.

VIII. PMSA SUPPORTS RETURN OF THE DEFERRAL ACCOUNT PROCEEDS TO TOTE

Q: Does PMSA support the request by intervenor TOTE Maritime Alaska LLC ("TOTE") to have the proceeds in the PSP deferral account discharged back to TOTE?

A: Yes. PMSA supports TOTE's requests in this proceeding regarding the return of the proceeds of the deferral account entered by the Commission as Order 13 in the prior rate case.

Q: Does PMSA support a request by TOTE to have pilotage for domestic vessels charged on the value of their domestic tonnage calculations in the current general rate case?

A: Yes. PMSA supports TOTE's requests in this proceeding for the new tariff to reflect the continuation of the historic practice by PSP to charge US-flagged vessels by their domestic tonnage and foreign-flagged vessels by their international tonnage.

Q: Did you submit a declaration in support of the August 26, 2021 petition by TOTE for an Amendment of the prior rate case's Final Order?

A: Yes.

Q: What was the purpose of your declaration?

A: My declaration detailed my understanding of the application and meaning of the tariff as adopted by the Commission and as proposed by PSP, as evaluated by UTC Staff, and as implemented by PSP subsequently.

Q: Did you present any Exhibits as part of that declaration?

A: Yes.

Q: Are you providing those Exhibits again here as part of your testimony in this general rate case?

A: Yes, please find attached the following:

Exhibit MM-58: This is a true and correct copy of an email communication string that I initiated on January 11, 2011, with UTC Staff, specifically Ms. Ann LaRue and Mr. Scott Sevall, to ascertain the process for how the UTC Staff would determine whether the tariff as submitted by PSP after the Commission's Final Order was in compliance with the Final Order.

Exhibit MM-59: This is a true and correct copy of an email communication string that I initiated on January 20, 2021, with UTC Staff, specifically Ms. Ann LaRue and Mr. Scott Sevall, to ascertain whether a UTC Staff certification letter regarding the submitted tariff had been completed and the anticipated effective date.

Exhibit MM-60: This is a true and correct copy of an email communication string that I initiated on March 18, 2021, with UTC Staff, specifically Ms. LaRue and Mr. Sevall, to ask for confirmation of the process used when evaluating compliance with the Final Order, including confirmation that UTC Staff used the tonnage amounts which PSP represented in its *pro forma* at Exhibit WTB-11.

IX. RECOMMENDATIONS

Q: Does PMSA wish to offer recommendations for the Commission to consider with respect to proceeding with PSP's Petition in this general rate case?

A: Yes. On behalf of PMSA, I offer the following recommendations.

A. Automatic adjuster process for pilot boat life extension projects.

Q: What is PMSA's recommendation for the establishment of a process to consider an automatic adjuster for pilot boat life extension projects?

A: PMSA recommends that the Commission Order describe a process for PSP to follow to secure Commission consideration of a proposal to establish an automatic adjuster for pilot boat life extension projects.

Q: Please describe the elements that PMSA recommends for this process.

A: PMSA recommends the following process consistent with the filing requirements of RCW 81.116.030, WAC 480-07-505, WAC 480-07-525, and related regulations:

(1) PSP may file a petition and proposed tariff for the creation of a Pilot Boat Life Extension Project Surcharge one year from the effective date of

the current tariff, pursuant to RCW 81.116.030(1) for the purpose of the life extension project for Pilot Vessel *Juan de Fuca*.

(2) PSP shall request immediate suspension of the tariff for the purpose of a general rate proceeding pursuant to WAC 480-07-505(1)(e), (6).

(3) The Petition shall be filed with work papers limited only to the question of the Pilot Boat Life Extension Surcharge and include all necessary testimony by PSP including a pro forma with documentation for all adjustments and a calculation of the revenue impact of the proposed surcharge pursuant to WAC 480-07-525(4)(d), (e), (m), (q), (s) and any other applicable provisions of the work papers requirement limited to the pilot boat *Juan de Fuca* life extension program.

(4) PSP should file a motion to set expedited schedule with the filing. However, PSP should not expect an approval of the motion unless all of the provisions directed by the Commission in its order in this current rate case have been met. If these terms are met, PSP should presume that an expedited schedule would be appropriate for a petition limited to this issue as long as it does not unnecessarily constrict the parties' ability to review the case.

(5) If the Commission agrees with the creation of a surcharge, it shall at that time establish and approve the explicit terms upon which PSP may pursue future compliance filings to reflect automatic periodic or annual adjustments to pilotage rates pursuant to WAC 480-07-505(4)(c), with the explicit proviso that future compliance filings, while not considered general rate proceedings, shall nonetheless be subject to intervention by public hearing if requested by a stakeholder with standing under WAC 480-07-505(1)(e).

(6) Compliance filings shall only be in order after the completion of a vessel life extension project and delivery to PSP or PSP's securing vessel financing that is due and payable after completion of a vessel life extension project.

(7) PSP must meet and confer with ratepayer stakeholders at least 6 months prior to filing any general rate proceeding petition and at least 3 months prior to filing any compliance filing and provide all estimates on which a pro forma and other workpapers will be based.

Q: What are the substantive requirements of these filings as recommended by PMSA?

A: With respect to the initial petition filing to establish the surcharge, PMSA proposes all of the following: testimony including work papers or supplemental to the work papers shall occur prospectively and prior to the initiation of a pilot boat life extension project and include basic design and performance specifications by a naval architect or boat construction firm, cost estimates, proposed timeline of major milestones for design and construction of modification of an existing vessel or installation of life extension modifications on an existing pilot boat, and plans for long term financing. The testimony shall also include sufficient data to determine and quantify the associated operational savings, including reduced repair and maintenance expenses that are reasonably expected to result from the service life extension modifications, and shall set forth the proposed basis for periodic review to determine actual savings over the life of the pilot boat. The Commission shall note any associated operational cost savings, including reduced repair and maintenance expenses, resulting for such modifications and direct the accounting of an adjustment at a future general rate case, as appropriate. The proposed tariff submission shall describe amendments to the tariff including definitions for the terms of the surcharge, including "vessel life-extension," a description of the surcharge consistent with the terms of the Commission Order in this present rate case, and an initial surcharge rate of $0 per assignment.

With respect to future compliance filings for rate collection, all testimony shall be based on the completion of the vessel life extension project and include pro forma adjustments based on a full accounting of all actual costs incurred, historical timeline of major milestones for design and construction of modification of an existing vessel or installation of life extension modifications on an existing pilot boat, confirmation of the completion of the vessel and its seaworthiness by a naval architect, and all long term financing in place, if applicable, along with a proposed surcharge rate and schedule for collection. These costs would reasonably include the cost of construction financing and a boat mortgage principle and interest acquired post-delivery. Because the pilot boat will have a useful life with a 20-year benefit, financing and the rate of cost recovery must necessarily be consistent with the need for a large capital item spreading its cost recovery over a multi-year recovery period. The recovery period should reflect the expected lifetime of the asset or the reasonable period over which the asset costs are financed, whichever is earlier, and the cost recovery period should not be accelerated at a rate faster than the IRS depreciation schedule for this asset. The proposed tariff submission in compliance filing shall be limited to striking the surcharge rate of $0 per assignment and replacing it with the new proposed rate per assignment.

Q: What does PMSA propose in the case of a subsequent sale or disposition of a pilot boat asset that was subject to this surcharge?

A: In the event of the sale or other disposition of any pilot boats, PSP shall submit a compliance filing detailing the net proceeds from such sale or disposition, and of the manner in which the net proceeds are to be used to reduce any debt associated with the modifications to existing pilot boats subject to a surcharge.

Q: When would the proposed surcharge end?

A: Upon the cessation of payment of costs or on a pilot boat mortgage used to finance a vessel life extension modification, PSP shall cease all collections under the surcharge. PSP shall file an end of surcharge compliance filing for the purposes of publication of an elimination of the Pilot Boat Life Extension Surcharge and have it stricken from the tariff.

Q: What provisions of this recommendation would be applicable to the pilot vessel *Puget Sound* or any other subsequent boat life-extension processes

A: All the same provisions should be made applicable to subsequent vessels on the same terms as the *Juan de Fuca*, so long as the subsequent initial petition and filings to establish a surcharge take place at least one year apart or are included in a petition for a general rate case. If the provisions for a surcharge are submitted along with a general rate case the timing for the process shall not be based on the presumption of an expedited calendar.

Q: Are the principles and mechanisms in this proposed automatic adjuster based on any other similar pilot boat capital cost recovery measure in another pilotage ground?

A: Yes, these provisions are similar to and intended to work in a similar manner to the pilot boat surcharge process regulations set in place by the California State Board of Pilot Commissioners at 7 CCR §236.1. Exh. MM-61. The proposed initial petition and suspended filing process to establish the surcharge here are intended to roughly track in terms of process and substance the preliminary authorization and necessity determination phase of the California process. PMSA worked in collaboration with the San Francisco Bar Pilots to endorse and adopt this regulation over 15 years ago. Since then PMSA has worked to further develop this rule and has supported the implementation of multiple pilot boat life-extension and new pilot boat requests pursuant to this rule. The proposed compliance filing process to fix the rates that populate the surcharge is intended to roughly track the final authorization phase of the California process.

Q: Does this proposal include provisions for pilot boat fuel or other capital expenses at the Port Angeles pilot station?

A: PMSA does not recommend those at this time but is interested in additional communication with PSP on those issues subsequent to the completion of this general rate case.

B. BPC diversity, equity & inclusion program funding.

Q: What is PMSA's recommendation for the establishment of Funding for a BPC Diversity, Equity & Inclusion (DEI) Program?

A: PMSA supports the general proposition that additional efforts and funding for the support of more aggressive, effective, and substantial DEI programs are in the best interest of the State of Washington, the maritime industry, and the Puget Sound pilotage district. The way to achieve these goals is not to spend this funding by increasing expenses or DNI to existing licensed pilots or PSP, however. Spending such funds on existing pilots is antithetical to the notion of DEI given the present demographics. Moreover, the BPC is responsible for the training and recruitment of licensees, is charged with acting in the public interest, maintains public and transparent accounting of revenues, is subject to the budget authority of the state legislature, and has an established DEI program. It is important to note that building the licensed mariner pyramid at entry levels is an industry wide challenge and not a stand-alone pilotage commission issue. We trust BPC will make prudent decisions on how to best allocate efforts and funding on these efforts.

Q: How does PMSA recommend that funds be raised for the BPC DEI program?

A: Given the high-profile support for DEI efforts and the commitment to raising funds for this purpose in its petition in this rate case, we recommend that PSP and the industry ratepayers share the costs equally. As a model for collecting state funding charges with a similar 50/50 cost split recently enacted by the state legislature we would note that the BPC's recent SILA expenses were easily administered and maintained.

Q: By what method would the Commission institute a SILA-like model for BPC DEI program funding?

A: PMSA recommends that the Commission's Order in this current rate case recognize the provision in WAC 480-07-505(4)(e) that provides that a filing will not initiate a general rate proceeding for "[a]ny filing to collect tariff surcharges authorized by the legislature," and to direct PSP and PMSA to work with the BPC to authorize a tariff surcharge built on the SILA-model of 50/50 shared PSP and ratepayer funding for the purpose of funding the BPC DEI program.

C. Staff workshops to examine rate-of-return methodology.

Q: What is PMSA's Recommendation for the establishment of UTC Staff-led technical workshop to address rate-of-return methodology for pilotage services?

A: PMSA recommends that the Commission recognize that the direction to facilitate this workshop in ¶ 390 of the Order in the prior rate case was frustrated over the past two years and did not occur as directed and re-issue the same requirement to UTC Staff. PMSA recommends that language be included that precludes any new general rate case petition to be filed without a copy of the final analysis of UTC Staff on the question of the feasibility of applying rate of return methodologies to pilotage ratemaking.

D. Staff workshop on protective order clarification.

Q: What is PMSA's recommendation regarding the clarification of protective orders?

A: PMSA recommends that the Commission recognize that in both the prior inaugural rate case and in this rate case there were disputes among the parties regarding the release of information regarding pilot finances that centered on the privacy of individual pilots and the confidentiality of their individual financial information. Protective orders are an essential tool to facilitate discovery over issues central to a case focused on an individual pilot's compensation. Unfortunately, general protective orders have not been available, and specific ones pose procedural burdens on the party and Commission that should not be necessary. For instance, in this case, the Suspension Order (Order 01, TP-220513) at ¶ 9 directed parties to conduct discovery pursuant to WAC 480-07-400 to 425, which is inclusive of WAC 480-07-420 relating to protective orders; however, when directly asked for a protective order in this case, the Prehearing Conference Order (Order 03, TP-220513) at ¶¶ 40-42 could not rule out that such a protective order might nonetheless be subject to the Public Records Act, and so took a judicious and conservative approach to this risk. PMSA recommends that the Commission ask UTC Staff to facilitate a stakeholder workshop to address this issue and explore whether regulatory or legislative changes are necessary in order to clarify the availability of protective orders in pilotage rate cases and subject to public records exemptions.

E. Cost sharing as an efficiency incentive.

Q: What is PMSA's recommendations regarding the use of cost sharing as an efficiency incentive?

A: PMSA recommends that the Commission adopt a cost-sharing incentive to encourage further efficiency amongst the pilotage corps in this rate hearing.

Q: What model should the Commission use to adopt a cost-sharing incentive for pilotage?

A: The power cost sharing mechanisms for each of the three electric utilities are the most obvious models: if a utility is efficient with its power costs and ends up charging less to customers as a result, the utility can keep a portion of those savings and the ratepayers benefit from the rest. See Dockets UE-140762 for Pacific Power, UE-011595, Fifth Supplemental Order Avista, and UE-011570, Twelfth Supplemental Order for Puget Sound Energy.

These cost sharing provisions range from 50%-50% company–ratepayer splits, to 35%-65% and 25%-75% company-ratepayer splits, and 10%-90% company-ratepayer splits. the same basic principle of a revenue or profit-sharing incentive applies here. For example, if the pilots' DNI is more than what was targeted in the tariff due to efficiency improvements and efforts to hold down expenses, then PSP would keep a percentage of the amount over the authorized DNI amount for an additional distribution to the pilots depending on hitting different levels of efficiency or cost-containment around a Commission-selected baseline.

Q: Why should this concept be applied by the Commission to this ratemaking process instead of waiting for a stakeholder process or other future evaluation?

A: Given PSP's penchant for accelerated spending and expenses over the past 4 years, ratepayers have already absorbed more expenses than necessary through the existing tariff. Cost-sharing would reinforce to PSP that the way to grow income is by doing more jobs safely and lowering expenses. This is a common-sense approach that will provide long-term value for both ratepayers and pilots by creating a dividend for improved efficiency and customer service.

F. Service delay credits for ratepayers.

Q: What does PMSA recommend with respect to service delays?

A: As a monopoly operating under the regulatory compact, PSP has an obligation to provide timely and reliable service to its customers. For nearly two years PSP has refused to honor that compact and as a result abandoned it previously stellar 99.7% service rate. This occurred in an apparent effort to reduce internal callback liabilities, thus externalizing the costs of an ongoing inability to properly manage this internal deferred compensation program.

To counter the PSP solution of choosing to delay a ship over instituting effective internal incentives or internal management of schedules, PMSA recommends that the tariff include a Service Delay Credit for Ratepayers.

Q: At what level should the Service Delay Credit for Ratepayers be set?

A: If PSP delays a vessel on account of not making a pilot available, this is a result of pilots not making themselves available, whether on duty and taking a comp day or as a callback. PSP currentlycredits itself $1199 per callback job. To maintain the parity of this incentive, PMSA proposes that this should be the minimum charge for a Service Delay Credit for Ratepayers. To calculate the total credit, exclusive of the minimum charge, the hours of delay should be payable by hour at the same hourly rate already set for a Delay Charge under Item 360. Under the current tariff this amount is $247.75 per hour and is proposed to be revised by PSP.

Q: Please provide an example of how this credit would work under both a minimum charge and a non-minimum charge scenario.

A: Under a minimum charge scenario, if a pilot was not available and as a result a vessel movement fails to commence at the order time, but a pilot arrives 3 hours later, the credit payable to the vessel would be $1,199, because the time charge of $743.25 (the product of 3 hours and $247.75 per hour) is less than $1,199. Under a non-minimum charge scenario, if a pilot was not available to move a vessel at the order time, but a pilot arrives 10 hours later, the credit payable to the vessel would be $2,475.50 (the product of 10 hours x $247.75 per hour), which is greater than the minimum charge. Any grace period would be equal to the grace period considered when charging a vessel with a delay.

Q: What changes would PMSA propose to implement this credit?

A: We would request that the Commission approve the following additions to the tariff:

A new definition added to "Item 110: Definitions" of "Vessel Delayed by Pilot Unavailability" to mean "The circumstances under which a Vessel Movement fails to commence by the Order Time due to the unavailability of a Puget Sound pilot"; and, a new charge added to "Item 360 – Delay, Detention, Standby and Other" to read "Service Delay Credit to Vessels" to mean "For any and all circumstances when a Vessel is Delayed by Pilot Unavailability, the vessel shall be credited against all other pilotage charges assessed against a vessel at the greater of the following: $1,199 OR the total of $247.75 for every hour or fraction thereof. [$247.75 or to a rate which matches other Item 360 charges as otherwise amended in this general rate case]."

G. Productivity metric.

Q: What is PMSA's recommendation regarding productivity?

A: PMSA recommends that the Commission direct PSP to include a Productivity Metric in its next filing for a general rate case.

Q: What would be the purpose of the Productivity Metric?

A: The Commission should direct a Productivity Metric to allow the Commission and ratepayers to evaluate PSP's productivity over time. The intended outcome of this approach is to provide the data necessary to inform Commission decisions in the future regarding productivity and productivity inputs. This would be especially important to help demonstrate whether PSP is continuing to delay vessels unnecessarily as a result of a sub-optimal management of pilotage resources.

Q: What components should be included in the Productivity Metric?

A: PMSA recommends the inclusion of the following metric factors:

- Per Pilot total days of duty scheduled per month
- Per Pilot total days actually available for duty per month
- Per Pilot assignments completed on duty per month
- Per Pilot assignments completed off duty per month
- Per Pilot cumulative per year totals for each of the above
- Total Delays per month
- Total Pilots on Duty on Day of Delay
- Total Pilots Actually Available for Duty on Day of Delay
- Total Hours of Delay per Occurrence

X. CONCLUSION

Q: Does this conclude your testimony at this point in time?

A: Yes.