

Exh. MM-15
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

**EXHIBIT TO TESTIMONY OF
Captain Michael Moore
ON BEHALF OF
PACIFIC MERCHANT SHIPPING ASSOCIATION**

List of Testimony Not Recoverable

FEBRUARY 10, 2023

<u>Consulting and Legal Costs Associated with Preparation of Testimony & Exhibits Proposed to be Excluded from “UTC Expenses” Category</u>	<u>Bases for Exclusion</u>
<p>Chf. Mate Alysia Johnson, Exh. AJ-01T Testimony Preparation Costs to Exclude: ALL</p>	<p><i>Testimony & Exhibits Not related to a formula factor or PSP-proposed tariff revision:</i> Exh. AJ-01T testimony mainly focuses on non-pilot training and education completed at a Maritime Academy and on vessels not under pilotage. PSP does not propose these as formula factors in this case. These issues are not in dispute, not relevant, and extraneous.</p> <p>This lay testimony is provided by an individual whose only connection to pilotage is given “as the daughter of a now-retired Columbia River Bar Pilot.” Chf. Mate Johnson is neither a pilot trainee nor eligible to apply to be a pilot trainee. All other testimony related to diversity, equity and inclusion issues in the labor market regarding potential pilot trainees are lay opinions and not first-person testimony.</p>
<p>Mr. Bruce McNeil, Exh. BJM-01T Testimony Preparation Costs to Exclude: ALL</p> <p>Mr. Christopher Woods, Exh. CRW-01T Testimony Preparation Costs to Exclude: ALL</p>	<p><i>PSP Non-responsive to Foundational Data Requests:</i> PMSA would not have proposed to exclude costs from the preparation of these sets of testimony regarding the PSP Retirement Plan, which is relevant to this rate case, but for PSP’s refusal to answer any Data Requests for the testimony provided by these individuals. As a result, these costs should be excluded.</p> <p>PMSA sought discovery related to PSP’s retirement plan and numerous issues in the testimony of Mr. McNeil and Mr. Woods in DRs 471-545, propounded on January 6, 2023. PSP claimed privilege to each and every Data Request for Mr. McNeil and Mr. Woods, and therefore no</p>

	<p>production has been made. The testimony made by these individuals is improper if not made subject to the Commission’s rules regarding adequate discovery.</p>
<p>Dr. Charles Czeisler, Exh. CAC-01T Testimony Preparation Costs to Exclude:</p> <ol style="list-style-type: none"> 1) ALL related to Fatigue (Exh. CAC-1T, 11:17 – 81:2) 2) ALL related to PSP Efficiency Report Preparation (Exh. CAC-1T, 81:2-85) 	<p><i>(1) Testimony & Exhibits not related to a formula factor or PSP-proposed tariff revision. Issues resolved in the prior rate case (see Final Order 09, TP-1900976, ¶¶ 80, 86, 89, 93, 451 (8)).</i></p> <p>Exh. CAC-1T, 11:17-81:2 Testimony focuses generalized issues of fatigue in piloting. PSP does not propose fatigue as formula factors in this case. These issues are not in dispute, not relevant, and extraneous. Moreover, this issue was affirmatively addressed and dismissed in the prior rate case. PSP offers no testimony in support of an argument for why the UTC conclusion in the prior case regarding fatigue should be reversed.</p> <p><i>(2) PSP Non-responsive to Foundational Data Requests:</i> PMSA would not have proposed to exclude costs from the preparation Dr. Czeisler’s testimony regarding the PSP Efficiency Recommendations, which are relevant to this rate case, but for PSP’s exclusion to access of foundational data requests. The refusal to provide DR responses is specifically regarding the preparation of the Report prepared by Dr. Czeisler and the testimony he provides based on the Report. These costs should be excluded.</p> <p>Dr. Czeisler’s testimony regarding PSP efficiency is based on the preparation of a Report to PSP. In the preparation of the Report, PSP provided databases to Dr. Czeisler and Dr. Czeisler ran models to assess the databases. PMSA sought discovery of these models and databases in DR 36, propounded on October 7, 2022. PSP response to DR 36 promised production. PMSA has made multiple attempts</p>

	<p>to acquire this data, but to-date four months later no production has been made. The testimony made regarding the Report has little probative value without access to the data and models which underlie the report.</p>
<p>Mr. Clay Diamond, Exh. CLD-01T Testimony Preparation Costs to Exclude: Exh. CLD-01T, 5:15-14:17</p>	<p><i>Testimony & Exhibits not related to a formula factor or PSP-proposed tariff revision.</i></p> <p>Exh. CLD-01T 5:15-14:17 testimony focuses generally on issues regarding licensing in general and in other jurisdictions, the historical underpinnings of the US pilotage system, and non-rate related pilotage regulation. PSP does not propose formula factors relevant to this testimony in this case. These issues are not in dispute, not relevant, and extraneous. Specifically, any costs in the preparation of testimony related to the “History of the State Pilotage System” should be excluded.</p> <p>PMSA is not opposed to the recovery of costs associated with the testimony of Mr. Diamond related to rate-setting.</p>
<p>Mr. Charles Costanzo, Exh. CPC-01T Testimony Preparation Costs to Exclude: Exh. CPC-01T, 11:15-51:11</p>	<p><i>Testimony & Exhibits not related to a formula factor or PSP-proposed tariff revision. Issues resolved in the prior rate case (see Final Order 09, TP-190976, ¶¶ 362, 399-401).</i></p> <p>Exh. CPC-01T, 11:15-51:11 testimony focuses generally on issues regarding the general statutory purposes of pilotage regulation and licensing, and non-pilotage related regulation of vessels including conduct of vessels abroad and under applicable federal and international laws unrelated to pilotage, and related to non-ratemaking pilotage regulation. PSP does not propose formula factors relevant to this testimony in this case. These issues are</p>

	<p>not in dispute, not relevant, and extraneous. Moreover, this testimony is intended to argue for pilotage rates set based on the profitability of pilotage customers which was addressed and prohibited as a matter of policy in the prior rate case. PSP offers no testimony in support of an argument for why the UTC conclusion in the prior case prohibiting decisions on the basis of customer profitability should be reversed. Specifically, any costs in the preparation of testimony related to the “Statutory ‘Best Achievable Protection’ Standard...” and “The Unscrupulous Practices of Foreign Flag Shipowners” should be excluded.</p> <p>This lay testimony on these matters also rests nearly entirely on third party accounts and magazine articles and not any own first-hand knowledge or expertise upon which to offer personal opinions.</p>
<p>Capt. Eric Klapperich, Exh. ECK-01T Testimony Preparation Costs to Exclude: Exh. ECK-01T, 6:4-48:15</p>	<p><i>Testimony & Exhibits not related to a formula factor or PSP-proposed tariff revision.</i></p> <p>Exh. ECK-01T 6:4-48:15 testimony generally is a description of the core competencies of pilots performing tasks in the context of the pilotage licensing, training, and the existing regulatory requirements of pilots in the Puget Sound, generally. PSP does not propose formula factors relevant to this testimony in this case. These issues are not in dispute, not relevant, and extraneous. Specifically, no issues regarding basic explanations or descriptions of the jobs conducted by pilots are in dispute nor is PSP’s filing dependent on any factors so described.</p> <p>PMSA is not opposed to the recovery of costs associated with the testimony of Mr. Klapperich related to rate-setting issues, including the question of the application of</p>

	<p>International Gross Tonnage versus Domestic Gross Registered Tonnage.</p>
<p>Mr. Ken Ericksen, Exh. KAE-01T Testimony Preparation Costs to Exclude: (1) ALL testimony Presenting PSP Data as “IHS Markit” Data</p> <p>(2) ALL testimony related to pilot customer profitability</p>	<p><i>(1) Costs for presentation of PSP’s own data.</i> To the extent that KAE-01T, presents the data and work product of PSP as the work product of Mr. Ericksen or of IHS Markit, the costs associated with this testimony should be excluded. Ratepayers should not have to pay for a very costly outside consultant to produce data which PSP could have introduced itself at no cost. In addition, IHS Markit should not charge for the reproduction of data with itself as the source for which it was not the source.</p> <p><i>(2) Testimony & Exhibits not related to a formula factor or PSP-proposed tariff revision. Issues resolved in the prior rate case (see Final Order 09, TP-190976, ¶¶ 362, 399-401).</i> This testimony is intended to argue for pilotage rates set based on the profitability of pilotage customers which was addressed and prohibited as a matter of policy in the prior rate case. PSP offers no testimony in support of an argument for why the UTC conclusion in the prior case prohibiting decisions on the basis of customer profitability should be reversed. These costs should be excluded.</p>
<p>Capt. Mitch Stoller, Exh. MSS-01T Testimony Preparation Costs to Exclude: ALL</p>	<p><i>Testimony & Exhibits not related to a formula factor or PSP-proposed tariff revision.</i></p> <p>Exh. MSS-01T testimony generally is a description of the core competencies of pilots performing tasks in the context of the pilotage licensing, training, and the existing regulatory requirements of pilots in the United States,</p>

	<p>generally. PSP does not propose formula factors relevant to this testimony in this case. These issues are not in dispute, not relevant, and extraneous. Specifically, no issues regarding basic explanations or descriptions of the jobs conducted by pilots are in dispute nor is PSP’s filing dependent on any factors so described.</p> <p>In the prior rate case, the UTC affirmatively stated that it does not regulate the competency of pilots, the training of pilots, or the selection of pilot trainees, as those tasks are reserved for the jurisdiction of the BPC.</p>
<p>Capt. Sandy Bendixen, Exh. SB-01T Testimony Preparation Costs to Exclude: Exh. SB-01T, 9:22-29:24</p>	<p><i>Testimony & Exhibits not related to a formula factor or PSP-proposed tariff revision. Issues resolved in the prior rate case (see Final Order 09 ¶360-361).</i></p> <p>Exh. SB-01T testimony generally is a description of the current state of international and federal law which was already established in the prior rate case. PSP does not propose formula factors relevant to this testimony in this case. These issues are not in dispute, not relevant, and extraneous. Specifically, no issues regarding basic explanations or descriptions of the general state of safety of pilot ladders is in dispute nor is PSP’s filing dependent on any factors so described. In addition, pilot safety issues, including pilot ladder issues in particular, are already a consideration of BPC.</p>