



April 19, 2019

Mr. Mark Johnson, Executive Director and Secretary
Washington Utilities & Transportation Commission
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Docket TP-180402- CR-102 Comments of the Pacific Merchant Shipping Association

Dear Executive Director Johnson:

On behalf of the Pacific Merchant Shipping Association (PMSA) and its members, thank you again for the opportunity to submit comments regarding the proposed rulemaking in Docket TP-180402 to implement SSB 6519 (Chapter 107, Laws of 2018) with respect to marine pilotage ratesetting. As you know, PMSA represents owners and operators of ocean carriers and oceangoing vessels doing business on the U.S. West Coast, including a majority of those plying Washington state waters as the customers of the compulsory Puget Sound pilotage monopoly.

PMSA is pleased to submit these comments in SUPPORT of the adoption of draft rules. We would like to extend our appreciation to WUTC rulemaking staff for incorporating a large number of the suggestions made by the major interested stakeholders during the CR-101 comment solicitation process. Both PMSA and the Puget Sound Pilots (PSP) made significant written comments on multiple versions of preliminary drafts and most of those comments resulted in changes reflected in the current proposed rule.

We submit the following comments and suggestions to further clarify and improve upon the current draft language before it is finalized. Specifically:

- WAC 480-07-500 (5), -505 (5), -505 (6) – PMSA requests a clarification regarding the spot-inclusion of the phrase “or pilotage service provider” in these subsections. We provided in our CR-101 comments a concern that the use of this phrase could cause confusion in rate proceedings,¹ and we are very pleased that the Staff Response in the CR-101 Comment Matrix document regarding this potential issue was “Staff has included the proposed changes in the draft rules.” However, the language submitted with the CR-102 does not reflect the proposed changes or the Staff Response. This appears to be a clerical drafting oversight. We would respectfully ask that the CR-102 version be clarified and revised to align with the Staff Response to the PMSA CR-101 comments.

¹ PMSA hereby incorporates by reference all previous communications regarding Docket TP-18042.

- WAC 480-07-505 (1)(e) – PMSA respectfully requests that this subsection also be clarified with a non-substantive amendment to state that any “person with a substantial interest” may file a petition that would initiate general rate proceedings. We believe it would be helpful to clarify in this section that, pursuant to the authority created by SSB 6519, that any person with a substantial interest has a right to petition for ratesetting proceedings by statute.

Recommended revision:

WAC 480-07-505 (1)(e) “Any petition ***filed by a person with a substantial interest*** to change the rates, charges, or rules of marine pilotage services tariff.”

- WAC 480-07-505 (4)(c) – PMSA supports all types of simple ministerial filings of new tariffs which merely reflect previously Commission-authorized adjustments to rates without a general rate proceeding. As discussed in our CR-101 submissions, not all of those will be based solely on “periodic or annual” adjustments, as some tariff items may be adjusted based on actual costs. We believe this section should also be amended to make clear that the allowance for prior Commission-approved automatic adjustments to proceed ministerially without a full General Rate case applies generally and not just to those adjustments which are time-based in nature.

Recommended revision:

WAC 480-07-505 (4)(c) “Filings to reflect any automatic ~~periodic or annual~~ adjustment to pilotage rates previously established and approved by the commission in a general rate proceeding;”

- WAC 480-07-505 (4)(e) –PMSA supports the WUTC staff’s original draft version of this language (CR-101, 7/18/2018 version), but we must respectfully *OPPOSE* the CR-102 version which added an exemption from general rate proceedings for “[a]ny filing ... to recover changes in state, local or federal taxes or fees applicable to pilotage services.”

PMSA included extensive and detailed comments in Opposition to this language in our February 1, 2019 CR-101 comments (at pp. 4-6). Unfortunately, our comments on this section are not reflected in the CR-101 Comment Matrix.

Without restating in detail our prior comments, we believe that this language should be removed for being overly vague, broad, and fraught with potential unintended impacts, especially given a lack of understanding of the taxes implicated by this exemption and the tax treatment of the relationships between PSP and individual pilot licensees. We renew our concerns with this exemption.

Recommended revision:

WAC 480-07-505 (4)(e) “Any filing to collect tariff surcharges authorized by the legislature ~~or to recover changes in state, local or federal taxes or fees applicable to pilotage services.~~”

If the CR-102 draft is not revised to remove this clause, we would respectfully request that the WUTC describe how it intends to implement this section with specific reference to our prior submitted concerns which have not been addressed to-date in the CR-101 Comment Matrix. In addition, please specifically address why it was determined that the language in the current CR-102 draft should materially deviate from the current tax exemption language which exists in WAC 480-07-505(3)(c), applying only to “changes to state or local fees, charges, or taxes directly related to the [regulated activity.]”

Please feel free to contact PMSA at any time with questions, comments, or any additional follow-up to this letter regarding the rulemaking process, Docket TP-180402, or on any other matter related to the provision of compulsory state pilotage services, including Capt. Mike Moore, in our Seattle office at mmoore@pmsaship.com or (206) 441-9700 or, Ms. Michelle DeLappe, Garvey Schubert Barer PC, counsel to PMSA at mdelappe@gsblaw.com or (206) 816-1403, or to me directly at mjacob@pmsaship.com.

PMSA intends to appear at the April 24th CR-102 hearing in support of this rule adoption.

Thank you for the consideration of our comments.

Respectfully submitted,



Mike Jacob
Vice President & General Counsel

cc: Michelle DeLappe, Garvey Schubert Barer, PC
Mike Moore, PMSA