

BEFORE THE STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

Docket No. TP-190976

PACIFIC MERCHANT SHIPPING
ASSOCIATION'S RESPONSE IN
OPPOSITION TO PUGET SOUND
PILOTS' MOTION TO STRIKE
TESTIMONY FROM CAPTAIN MIKE
MOORE

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1. Pursuant to WAC 480-07-375(4), Intervenor Pacific Merchant Shipping Association (“PMSA”) hereby asks the Commission to deny Puget Sound Pilots’ (“PSP’s”) motion to strike portions of the testimony of Captain Michael Moore.¹

I. ISSUE PRESENTED

2. PSP’s motion presents a single issue for the Commission to decide:

The Commission has broad discretion to consider any evidence it deems relevant. PMSA, in its role as consumer advocate in this case of first impression, proffered Capt. Moore’s testimony on topics concerning the current pilotage tariff and various points discussed in testimony introduced by PSP. Should the Commission exclude portions of his testimony?

II. MATERIAL FACTS AND EVIDENCE RELIED UPON

3. PMSA’s response relies on the testimony of Capt. Michael Moore (Exh. MM-1Tr)² his curriculum vitae (Exh. MM-2r), the responses to data requests that PSP submitted with its motion, and the Declaration of Capt. Moore (cited as “Moore Decl.”) that accompanies this response.

¹ PSP’s counsel misaddresses Capt. Moore in this and other filings as “Mr. Moore.” The formal title for Capt. Moore as a duly retired US military service personnel is “Captain Michael Moore, USCG, Ret.” PMSA requests that parties acknowledge his earned rank and service designation.

² References to PMSA’s prefiled exhibits correspond to the revised exhibits submitted concurrently with this response. The revisions were not substantive and were only to conform them to requirements under WAC 480-07-460. For example, Exh. MM-1Tr was previously marked as Exh. MM-01. Page and line number references have not changed except to correct some line-spacing issues for clarity of reference.

4. This ratemaking proceeding presents the Commission with its first opportunity to establish pilotage tariffs. No previous evidentiary record, briefing, or decisions subject to the requirements of the Washington Administrative Procedure Act (“APA,” chapter 34.05 RCW) exist on this subject.
5. Capt. Moore’s extensive qualifications are summarized in his testimony and curriculum vitae.³ In his highly decorated career in the U.S. Coast Guard, he specialized in marine safety and navigational regulation. His duties regularly included the issuance, testing, regulation and discipline of pilotage licenses and licensees. He has nearly two decades of experience representing the maritime industry in matters related to the regulation of pilotage in the Puget Sound, including ratesetting. Capt. Moore’s declaration accompanying this response expounds on his experience to address the specific claims in the PSP motion.

III. LEGAL AUTHORITY AND ARGUMENT

A. WAC 480-07-495(1) sets forth the correct standard for admissibility. Because PSP’s motion focuses on the wrong standard, its arguments miss the mark.

6. Admissible evidence for this proceeding is “all relevant evidence” as long as “the presiding officer believes it is the best evidence reasonably obtainable, considering its necessity, availability, and trustworthiness.” WAC 480-07-495(1). Similarly, admissible evidence under the APA is “the kind of evidence on which reasonably prudent persons are accustomed to rely in the conduct of their affairs” in the

³ Exh. MM-1Tr at 1-7; Exh. MM-2r.

judgment of the presiding officer.⁴ These principles grant the Commission broad discretion to consider evidence it deems relevant.⁵ PSP’s motion entirely omits any reference to or discussion of these foundational principles, which directly govern the admissibility of evidence in Commission proceedings.

7. Moreover, at this stage of the present proceeding, the Commission need only determine whether the portions PSP objects to are “so demonstrably irrelevant to the disputed issues that the Commission would not admit it into evidence if it were offered.”⁶ Because this is the first time the Commission is hearing a case on pilotage tariffs, the importance of establishing a fulsome record is crucial. Any evidence that might benefit the record should be admitted. As PSP notes (Mot. at ¶ 2), objections in administrative proceedings generally go to the weight, not admissibility, of the evidence. In a case of first impression, as here, following this approach to evidence is even more imperative.
8. Rather than analyzing Capt. Moore’s testimony under these controlling principles, however, PSP’s motion focuses exclusively on application of the rules of evidence—or more specifically, on a single rule, ER 702. PSP states that, under “WAC 480-07-495, the Administrative Law Judge should consider the rules of evidence in considering the admissibility of evidence.” Mot. at ¶ 6. This is not exactly what that rule says. Rather, WAC 480-07-495(1) states, “The presiding officer will consider, *but is not*

⁴ RCW 34.05.452(1); Order M. V. C. No. 1978, *In Re Application D-75018 of Sharyn Pearson and Linda Zepp, d/b/a Centralia/Sea-Tac Airport Express* (Sept. 1, 1992).

⁵ Order 16, *In re Speedishuttle Washington, LLC*, Docket TC-143691 (consolidated) (Feb. 3, 2017).

⁶ *Id.*

required to follow, the rules of evidence governing general civil proceedings in non-jury trials before Washington superior courts when ruling on the admissibility of evidence” (emphasis added).

9. PSP’s motion cites as support two appellate decisions reviewing application of the rules of evidence where superior court judges were *required* to follow those rules as though those cases supported the Commission’s discretionary application of the rules of evidence. Mot. at n.5. Those two decisions in no way support applying the rules of evidence as proposed by PSP’s motion. The first decision PSP cites is inapplicable because it involved a jury trial.⁷ Not even if the Commission were required to follow the rules of evidence would admissibility in jury trials apply: WAC 480-07-495(1) specifies consideration of the rules only as they would apply in bench trials. Juries present different considerations, as a prior Commission order explained:

The “highly prejudicial” standard, which is intended to shield juries from hearing information that may unfairly taint their perception, does not apply in the context of administrative proceedings. The administrative law judge, unlike a jury, is presumably capable of making an unbiased determination about whether the challenged evidence is admissible and how much weight to afford it, if any. The standard we apply here is whether the testimony at issue is relevant, and therefore admissible, in this proceeding.⁸

The second decision PSP cites is equally irrelevant: it concerned the admissibility of a doctor’s opinion on a very narrow issue that is a subject of scientific studies: “the effects of intoxication on the mental capacity to form an intent”—in that case, the

⁷ *Walker v. State*, 121 Wn.2d 214, 848 P.2d 721 (1993) (reinstating a jury verdict).

⁸ *In re Speedishuttle*, *supra* at n.3.

intent to shoot another person.⁹ The same point regarding the unsuitability of the “highly prejudicial” standard in administrative proceedings is true of the specific rule of evidence (ER 702) that PSP argues for here: an administrative law judge is also capable of according testimony like that offered by PSP’s and PSMA’s witnesses the appropriate amount of weight. PSP’s motion fails to distinguish the markedly different circumstances between mandatory aspects of a civil trial (particularly one involving a jury) and the Commission’s broad discretion.

10. Equally inapplicable here is the only order by this Commission that PSP cites. Mot. at n.1-4, n.13. In that case involving electric and natural gas services (a very well established area of ratemaking for the Commission), a Montana assistant attorney general submitted testimony for the first time in the rebuttal phase of the proceeding (thus providing no opportunity for the parties to respond to his only testimony in the proceeding).¹⁰ His testimony entirely concerned legal topics that were not issues in that proceeding.¹¹ Moreover, he lacked any qualifications for offering factual testimony or opinions on factual matters relevant to the issue in that proceeding.¹² In contrast, this proceeding is a case of first impression for the Commission, and Capt. Moore is extremely experienced with and knowledgeable about the factual matters relevant to the issues in this proceeding.

⁹ *Safeco Ins. Co. v. McGrath*, 63 Wn. App. 170, 178, 817 P.2d 861, 866 (1991).

¹⁰ Order 07, *In re Puget Sound Energy*, Dockets UE-170033 and UG-170034 (consolidated) (Aug. 25, 2017).

¹¹ *Id.*

¹² *Id.*

B. Even if the Commission chooses to apply the rules of evidence as applicable in a civil bench trial, all of Capt. Moore’s testimony qualifies as admissible.

11. To the extent the Commission chooses to look to the rules of evidence, the first rule on admissibility that must be considered is the rules on relevance—an important first step that PSP’s motion also overlooks despite its frequent contention that certain portions of the testimony are “irrelevant.” Mot. at ¶¶ 1-2, 12 15-16. Evidence Rule 401, defining relevant evidence, “is not a high hurdle.”¹³ “Relevant evidence” under ER 401 is “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Relevant evidence (1) has probative value, or a tendency to prove or disprove a fact, (2) which is material, or “of consequence in the context of the other facts and the applicable substantive law.”¹⁴ “Minimal logical relevancy” is all that the rule requires.¹⁵
12. PSP’s motion does not attempt to show that any of Capt. Moore’s testimony is totally lacking in logical relevancy to this proceeding. In fact, the testimony PSP points to is highly relevant to the issues before the Commission in this proceeding. PSP points first to several “legal arguments” in Capt. Moore’s testimony as “largely irrelevant” without explaining why they are, in PSP’s view, irrelevant. Mot. at ¶ 12. Each of the examples PSP cites are relevant on their face: they directly involve the setting of

¹³ *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 670, 230 P.3d 583 (2010).

¹⁴ *State v. Rice*, 48 Wn. App. 7, 737 P.2d 726 (1987).

¹⁵ 5 K. Tegland, Wash. Prac., Evidence Law and Practice § 401.4 (5th ed.) (citing *Salas v. Hi-Tech Erectors*, *supra*, and *State v. Burkins*, 94 Wn. App. 677, 973 P.2d 15 (1999)).

pilotage tariffs and the decisions before the Commission in this proceeding (Mot. at ¶¶ 13-19). Much of the testimony PSP cites involves subjects that PSP's witness testimony discussed, such as PSP expenses (Mot. at ¶ 16) and pilot retirement benefits (Mot. at ¶ 17).¹⁶ PSP appears to argue that these portions of Capt. Moore's testimony lack relevance because they each cite, apply, or interpret the governing law. However, witnesses before the Commission routinely include their interpretations of how the governing law applies in their testimony, and the Commission does not usually exclude testimony on that basis.¹⁷ Moreover, to the extent that Capt. Moore's testimony is to introduce a citation to the applicable law, not to provide a legal opinion of its application per se, such citation would be not only relevant but also generally admissible by request for judicial notice without any further foundation necessary.

13. In only two other instances does PSP claim that any portion of the testimony is irrelevant. In PSP's words, "historical statistical trends in tariff revenue collection under the current tariff" and "analysis of historic revenues under the current tariff" are irrelevant. Mot. at ¶ 29. PSP makes no effort to explain why this is irrelevant. Under RCW 81.116.030(5), PSP must prove in this proceeding that the current tariff

¹⁶ See, e.g., Exh. LS-1T at 1:19-22 (describing the purpose of her testimony as in part to explain some expenses pilots seek "to recoup in rates"); Exh. WT-1T at 2:4-5 (describing the purpose of his testimony as in part to discuss the pilots' retirement program).

¹⁷ See, e.g., *In re Speedishuttle*, supra n.4 (denying motion to exclude pre-filed testimony related to witness's understanding of Commission rules, noting that, "correct or not," the testimony "does not exceed the scope of the issues in this proceeding").

is unfair, unjust, unreasonable, or insufficient. The introduction of this information regarding the existing tariff in Capt. Moore's testimony goes directly to this question and absolutely meets the requirement for relevance.

14. For the rest of the testimony PSP asks to exclude PSP does not challenge the testimony's relevance, thus impliedly conceding that this testimony concerns issues that are relevant to this proceeding. Based on the standard applicable here, because even PSP does not argue the listed portions are irrelevant, the evidence is admissible.
15. Moreover, the fact that some of Capt. Moore's challenged testimony is presented as opinions in no way diminishes its admissibility. For example, where testimony responds to and critiques testimony offered by another witness, the Commission has refused to strike the responsive testimony.¹⁸
16. A table detailing the relevance of each portion of testimony which PSP seeks to exclude in its list at paragraph 29 of the motion is attached to this response. The topics include issues that are highly relevant to evaluating the Puget Sound pilotage tariffs, including PSP's average revenue per vessel move, estimated future pilotage revenue growth, and the PSP watch system.

C. Even if ER 702 applied to the proceeding, Capt. Moore's testimony on behalf of PMSA, based on his considerable experience, is admissible and benefits the record in this case of first impression.

17. Capt. Moore's testimony benefits the record in at least two significant respects. He brings to bear his extensive experience and knowledge with maritime ratesetting

¹⁸ Order No. 8, *In re Speedishuttle Washington LLC*, Docket. TP# (May 5, 2017).

issues. The “amateur” testimony offered by “Mr. Moore” (Mot. at ¶¶ 2, 21) is in fact the testimony of a former U.S. Coast Guard Captain of the Port of Puget Sound, a decorated officer with a career in maritime safety, a degree in mathematics, an advanced degree in Marine Affairs, over four decades of experience of maritime experience, and nearly two decades of experience working with the Board of Pilotage Commissioners on substantive ratesetting matters.¹⁹ His extensive knowledge includes deep familiarity with laws, regulations, and tariffs that affect the maritime industry. He also has substantial experience working with pilots, particularly pilots in the Puget Sound.²⁰

18. Just as importantly, for purposes of this proceeding Capt. Moore serves as the voice of pilotage consumers who are members of PMSA. In that capacity, his testimony consists of the ratepayers’ positions on the issues raised in these proceedings— including PMSA’s position on (a) applicable law and regulations, (b) the current tariff and PSP’s proposed tariff, and (c) the evidence proffered by PSP in support of its proposed tariff changes.
19. To the extent that Capt. Moore offers opinions about various proposed changes to the tariff, it is hard to imagine how ratepayers could find any individual with more history and expertise on the subject than Capt. Moore. He has been present and directly involved in nearly 20 years of ratemaking procedure and process in the Puget Sound and served as the lead representative and advocate on substantive

¹⁹ Exhs. MM-1T:1-7, MM-2; Moore Decl. at ¶¶ 3-13.

²⁰ Exh. MM-1T at 3-5 (describing his extensive experience working with pilots and reviewing internal pilot procedures).

ratesetting matters for ratepayers at the state Board of Pilotage Commissioners over the same period.²¹ He has a breadth and depth of knowledge on this specific subject that would be nearly impossible to replicate. *Id.* at ¶ 13.

20. PSP's motion mischaracterizes PMSA's responses to data requests about Capt. Moore's qualifications to provide the testimony he offered. Mot. at ¶¶ 2, 11, 29. PMSA in no way "admits" that Capt. Moore lacks qualifications to offer any part of his testimony. Mot. at ¶ 11 (discussing PMSA Response to PSP DR No. 127). As stated above, Capt. Moore is eminently qualified to provide his offered testimony. Instead, PMSA's response simply observes that ER 702 doesn't apply to this administrative proceeding and that Capt. Moore's testimony accordingly was not formally proffered under ER 702. PMSA Response to PSP DR No. 127.

D. Even if ER 701 and ER 702 applied to this administrative proceeding, relevant evidence is still admissible under these rules.

21. For the most part, PSP does not in fact challenge the relevance of Capt. Moore's testimony. Instead, it rests its motion on its contention that some of Capt. Moore's testimony is "unqualified" "expert" opinion testimony that should be excluded under ER 702. Mot. at ¶ 2. As already discussed above, ER 702 is in no way binding on this proceeding.

22. Also, the parties have not been instructed to identify witnesses as lay witnesses or expert witnesses in this proceeding or to limit the substance of a witness's testimony

²¹ Moore Decl. at ¶¶ 9-13.

based on such an identification, to lay formal foundations for a witness's testimony as might be required under the rules of evidence.

23. Although extensive opinion testimony has been offered by numerous witnesses in this proceeding, no party has formally proffered witnesses as experts for purposes of “qualifying” any of these opinions. PSP itself has offered witness testimony of the exact type it seeks now to strike. To provide just a couple of examples from the testimony of PSP’s Vice President, Ivan Carlson:

- While PSP asserts that even basic mathematical calculations, such as calculations of averages, require advanced economic, statistical, or financial degrees (Mot. at ¶ 23, challenging testimony about “average revenue per vessel move”), PSP’s Vice President, Ivan Carlson, testifies about other averages, despite laying no foundation for his own economic, statistical, or financial qualifications.²²
- While PSP challenges Capt. Moore’s “opinion” testimony regarding the efficiency (or lack thereof) of PSP’s scheduling system (Mot. at ¶ 26), PSP’s Vice President, Ivan Carlson, also offered opinion testimony about the efficiency of the system.²³ Both witnesses’ testimony is presumably based on the same information; Capt. Moore based his opinion on the information provided by PSP in this proceeding.²⁴

²² Exh. IC-1T at 9:18, 18:13.

²³ See, e.g., Exh. IC-1T at 4:20-7:12.

²⁴ See, e.g., Exh. MM-1Tr at 44:24-45:13.

24. PSP witnesses have also opined on various topics with little to no foundation and less expertise than that of Capt. Moore. For instance, testimony regarding which other pilotage districts are “most comparable” to the Puget Sound²⁵ is based in part on the “qualification” that the individual offering the testimony took an “around-the-world” vacation in the early 1990s and observed pilots in various ports.²⁶ By contrast, Capt. Moore regulated and issued pilotage licenses and investigated pilots for violations of maritime safety rules and regulations in other port districts. Another example is the testimony offered by the PSP Executive Director that “the cost of the individual pilot is an infinitesimal percentage of total port call and terminal charges.”²⁷ She provides no evidence or citation for this claim—only her “long experience” of “almost ten years with the Ports [sic] of Seattle.”²⁸ By contrast, Capt. Moore has over 40 years of experience on the waterfront and nearly 20 years of experience representing customers of the Port of Seattle.
25. The fact that none of the testimony offered in this proceeding has been formally offered under ER 702 is not to say that some or all of the witnesses are not qualified to render the opinions they make; it merely reflects the fact that this administrative proceeding does not require the strict adherence to the civil court rules of evidence. Should such adherence be required in the future, each party will need to supplement

²⁵ Exh. EVB-1T at 21.

²⁶ Exh. EVB-1T at 5.

²⁷ Exh. LS-1T at 5.

²⁸ *Id.*

witness testimony. At this point, however, PSP cannot unilaterally demand that just one party (PMSA) comply with rules that are otherwise not applicable.

26. Even if ER 702 applied, the testimony in question should still be considered for at least three reasons. First, not all of the testimony challenged by PSP is opinion testimony. For example, as discussed in the attached table, PSP attacks multiple recitations by Capt. Moore of factual restatements of statistics published by the Board of Pilotage Commissioners in their annual reports and figures relying on simple spreadsheets that replicate those same statistics. The performance of simple, documented arithmetic or the plotting of statistics on a graph are not opinions; rather, they are a presentation of facts.
27. Second, ER 702 is conditional, in that it only applies “*if* scientific, technical, or other specialized knowledge will assist the trier of fact” (emphasis added). PMSA submits its testimony in the context of a proceeding that does not need such highly technical or scientific knowledge with respect to the pilots’ operations, revenues, or expenses. While Capt. Moore’s testimony might be considered specialized due to his multi-year experience with Puget Sound pilotage in many respects, the portions in question here apply very basic mathematical and graphical evaluation of simple averages, state-published annual summaries, and comparisons of single factor spreadsheets. The PSP business model is simple and not complex, the Board of Pilotage Commissioners Annual Reports are simple and not complex, and the tariffs upon which PSP derives revenues are simple and not complex. Nor does PSP claim that these matters require scientific or technical knowledge. Likewise, the analysis of

these items do not require scientific or technical knowledge. And some of the testimony challenged by PSP is admissible under ER 701 as lay witness opinion testimony rationally based on the perception of the witness, helpful to a clear understanding of the witness's testimony and the determination of facts in issues, and thus similarly is not within the scope of ER 702.

28. Third, for that opinion testimony that is based on specialized knowledge, Capt. Moore has the specialized knowledge required to assist the trier of fact in determining facts at issue, as discussed above.

E. The proper and least prejudicial remedy is to accord witness testimony its due weight based on the witness's qualifications, credibility, and foundation.

29. PSP itself proposes the appropriate solution for any potential deficiency in any of the witnesses' qualifications or the foundation for certain of their opinions: "the qualifications and foundations of such opinions should be subjected to no less"-and no more-"scrutiny than any other witness's testimony would be." Mot. at ¶ 21. To the extent any portion of a witness's testimony is determined to be lacking in adequate foundation or goes beyond matters for which he or she is qualified to offer an expert opinion, the appropriate remedy here is to adjust the weight accorded to the testimony in question, not to exclude it.

30. Ultimately, the Administrative Law Judges may agree or disagree with Capt. Moore's testimony. Either way, he is entitled to present his position, and that of PMSA, about issues of direct relevance to the issues in this proceeding.

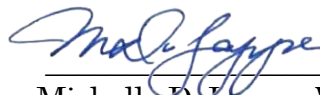
31. Capt. Moore's testimony constitutes the best available evidence of PMSA's position on a significant number of the disputed issues in this proceeding. To exclude it would harm the record in this proceeding. Most importantly, nothing prohibits the Administrative Law Judges from exercising their own judgment with respect to the weight of any of the witness testimony before them.

IV. CONCLUSION

32. Because Capt. Moore's testimony is absolutely relevant to this proceeding and he is eminently qualified to present facts and opinions on the subjects included in his testimony, the Commission should deny PSP's motion in its entirety.

Respectfully submitted this 8th day of July, 2020.

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ATTACHMENT TO PMSA’S RESPONSE TO PSP’S MOTION TO STRIKE

Page:Line	Relevance
12:19-13:2	<p>The examination of the amount of work completed in exchange for a unit of work charged by the tariff is a central question to this tariff. Capt. Moore’s testimony clearly stated the best measure of the “average” charge which is paid by a vessel after being “moved” by a pilot is the “Average Revenue per Vessel Move.” There is no other mathematical expression for this description. It is the most direct, simple, and accurate expression of a formulaic truism. Statements of fact are not opinions, and one does not need to be certified as an expert to calculate averages from a spreadsheet. The base figures from which this average is derived and the average itself are provided explicitly in Exh. MM-3r. This metric is relevant to this proceeding because, as a ratepayer advocate and representative, PMSA must be able to identify a metric by which the relative impacts of rate changes are imposed on ratepayers. Without such a metric, it is difficult to assess the impacts of tariff changes on ratepayers per unit of service provided. Mathematically, the average charge per move is exactly equal to the average revenue generated per move. It is relevant to consider the average charge of a unit of service paid by the ratepayer thereby facilitating trend analysis with respect to cost of the user and revenue generated. Indeed the Board of Pilotage Commissioners has reported this metric and the revenue per assignment metric for a number of years in order to demonstrate average costs for ratepayers and to isolate revenues per unit of work and not dependent on the variable of the number of pilots. The difference between assignments and moves is that PSP adds cancelations to moves to arrive at assignments.</p>
16:18-18:1; 18:18-20; 19:14-18; 20:14-24; 21:9-16; 22:1-20	<p>The examination of the amount of work completed in exchange for a unit of work charged by the tariff is a central question to this tariff. Capt. Moore simply referred to and displayed data provided by the Board of Pilotage Commissioners which are clearly related to the provision of pilotage services and the charges imposed for the provision of those services. Statements of fact are not opinions, and one does not need to be certified as an expert to express an observation of the results of these simple calculations or to compare averages and changes from a spreadsheet. For instance, demonstrating increases in the average revenue per vessel move versus whether or not such increases occurred in relation to changes or a lack of changes in tariff rates. The demonstration of this historical trend is not an opinion, it is a fact based on the data duly reported to the public by the state Board. Likewise making an observation of a fact, Capt. Moore notes that larger vessels pay more under the current tariff because the tariff is</p>

Page:Line	Relevance
	<p>volumetric. There is no use of or need for qualified expertise in economics or statistics to jointly understand the trends of these basic metrics that are made available by the Board and expressed with averages based on math taught in elementary school and clearly demonstrated through the spreadsheets that PMSA has attached as exhibits to support each of its calculations and figures. The relevancy of these trends are manifest to an understanding of the generation of pilotage revenues per move. Tonnage, for instance, is a key component of the tariff and thus relevant to an examination of the tariff, just as is the trend of average tonnage per move compared to average revenue per move. Ship call data is routinely reported by Capt. Moore to the Board each meeting and was the subject of a PSP DR in this matter. Finally comparing these trends does not require qualified expertise given such exercises are also simple functions of arithmetic and present themselves as facts, not as opinions. The cause of revenue collection under the tariff is highly relevant to an analysis of what revenues will be generated by the tariff.</p>
26:7-26	<p>The examination of the amount of work completed in exchange for a unit of work charged by the tariff is a central question to this tariff. Capt. Moore's identification of the units of actual pilotage service on a vessel is simply an identification of the units of work reported by PSP to the Board in terms of assignments with or without cancelations and bridge hours which PSP has submitted on numerous occasions, including in their proposal before UTC in this matter These are relevant because they represent units of work per dollar paid for a pilotage service provided under the pilotage tariff. And, because the tariff is volumetric and results in higher revenues based on the size of ships, consideration of the Shipping industry's economy of scale operations and the evolution of larger vessels is also directly relevant to the projection of future tariff revenues and understanding of prior revenues under the current tariff. The industry economics of vessel economies of scale are widely known and routinely reported on in industry trade publications. PSP's employees and pilots testify to the same trends in vessel size without any stated expertise in this matter and have also done so in previous ratemaking processes before the Board. Both PMSA and PSP routinely comment on the size of vessels and industry economies of scale because it is a factor which is directly relevant to the revenues derived from pilotage rates since the current tariff has provisions which determine costs and revenues on a volumetric basis tied to vessel sizes.</p>
27:10-16 (commenci	<p>The examination of the amount of work completed in exchange for a unit of work charged by the tariff is a central question to this tariff.</p>

Page:Line	Relevance
ng with the words “Average Revenue Per Bridge Hour...” and ending with the words “service and rest”)	PSP has reported average bridge hours per assignment as a measure of its workload in its matter, and just as the reporting by PSP and the Board on revenues per assignment and per move require only simple analysis by spreadsheet, it is information which is easily understood and applied. It is clearly relevant to a discussion of revenue per bridge hour since PSP’s own submission of its new proposed tariff recommends the adoption of a rate per bridge hour, hourly rates per bridge hour are also the core of the UTC staff submission’s proposed tariff, and several charges in the current tariff are also calculated by the hour. The analysis of revenue per bridge hour is centrally relevant to the analysis of a rate per bridge hour.
30:1-6	The examination of the amount of work completed in exchange for a unit of work charged by the tariff is a central question to this tariff. PMSA relies entirely upon PSP submitted data in order to learn how many hours are included in an average job per pilot, which is necessary in order to evaluate the proposed tariff since PSP proposed a tariff with rates charged by the hour. The PSP submittal is in obvious error, as it included several hundred entries with negative bridge hours per move (many included over one million negative bridge hours on several assignments). Therefore, adjustments were necessary in order to make any sense out of the PSP submission regarding bridge hours and the proposed rate and associated revenues produced. The removal of obvious anomalies and errors out of a spreadsheet - such as a claim that a pilot job was completed in negative one million hours - does not require any expertise, and was fully annotated in Exh. MM-14r.
30:14-18	The examination of the revenues and expenses covered by the tariff is a central question to this tariff. PMSA relies on PSP and WUTC Staff accounting of PSP expenses as reported. PMSA does not dispute the accounting of expenses as accurate or inaccurate. Capt. Moore simply read and relied on the most current public documents published by the state of Washington—the Board annual reports—that included a listing of all expenses and then compared those expenses to revenues. Comparing two numbers to evaluate relative size does not require any level of accounting expertise. Such a comparison revealed that growth in revenues exceeded growth in expenses regardless of how one defines whether an expense is essential, for example, promotion of monopoly versus purchase of boat fuel, or whether there may have been accounting issues underlying what numbers were reported to the Board.
31:8-15; 32:15-33:	The examination of the net income of pilots, that is the revenues of pilots less the expenses of pilots, is a central question to this tariff and

Page:Line	Relevance
21; 34:6-36:10	pilot net income is the main metric by which PSP proposes the tariff be set. Capt. Moore simply points out that revenue per vessel moved minus expenses per vessel moved yields a net income trend in order to compare with the net income as calculated by PSP, which can be misleading with respect to total earnings, compensation and how PSP books its expenses. Plotting PSP expenses as reported in annual reports is a simple chart exercise and can be done directly from Board reports, which was thoroughly documented in Exhs. MM-16r, MM-17r and MM-18r. Any member of the public can read these reports published by the state of Washington and can determine therefrom whether revenues and expenses are increasing or decreasing from year to year.
42:3-23	The examination of the amount of work completed in exchange for a unit of work charged by the tariff is a central question to this tariff. Capt. Moore simply compares average assignment workloads to each other and to the Board's set target assignment level. The statements simply reflect data reported by the Board based on PSP reports to the Board. Given that PSP's proposal seeks to decrease pilot individual workloads, a comparison of the proposed workloads to the current range of workloads is relevant to this analysis. All examination of these assignment levels are described in the text and in relevant exhibits. These are exercises in simple arithmetic and observation.
44: 3-45:7	The examination of the amount of work completed in exchange for a unit of work charged by the tariff is a central question to this tariff. Capt. Moore simply compares reported data regarding assignments and revenue per assignment as reported by the Board based on PSP reports to the Board. The mathematical average of demonstrating revenue per assignment is done by the Board and requires no additional statistical analysis by the parties. The Board's spreadsheets indicate that revenue per assignment increased while annual assignments per pilot decreased. Reporting these outcomes and comparisons is simply reporting facts.
48:1-9	The examination of the amount of work completed in exchange for a unit of work charged by the tariff is a central question to this tariff. PSP's proposed tariff is specifically predicated on the adoption of a less efficient pilotage corps. Capt. Moore relies on the published reports of the Board based on PSP reports to the Board to observe what is an obvious fact: that there exist significant differences in the number of completed assignments among individual pilots. Capt. Moore simply points out that an inefficient watch system allows pilots to be more productive or less productive.

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49:9-25	<p>Capt. Moore's areas of expertise most certainly include evaluations of marine safety incidents and management of basic levels of mariner competence, mariner job duties, and mariner health and safety factors, including fatigue. There is only one public and readily available source of information upon which an evaluation of the incidents in which Puget Sound pilots are engaged, and Capt. Moore points to and relies upon these same Board reports, findings, determinations and actions with respect to incidents. The data identified only one incident of fatigue and that one incident involved a pilot performing a lower than average assignment workload, not a higher than average assignment workload. Given the PSP proposal's claim that it is necessary to add pilots for fatigue, it is relevant to point out the result of Board incident reviews with respect to fatigue. Capt. Moore is imminently qualified to offer opinions on this subject which is squarely within his area of expertise. By contrast, PSP makes the assertion of risks to vessels from fatigue but offers no testimony from any individual with a marine safety background or any evaluation of the state's published data with respect to incidents to validate any claims of risk. PSP's claims in support of its proposed tariff has made this inquiry relevant to this proceeding.</p>
50:9-17	<p>The number of pilots is a central component of this tariff proceeding. Capt. Moore simply referred to and displayed data provided by the Board which are clearly related to the provision of pilotage services and the number of pilots which are able to provide those services. Statements of fact are not opinions, and one does not need to be certified as an expert to express an observation of the results of these simple calculations or to compare averages and changes from a spreadsheet. The statement is a mathematical statement applying the maximum actual assignment level of a pilot in 2018 to all pilots to mathematically calculate the number of pilots needed at the workload level demonstrated by the most productive pilot. The numbers are based on PSP and Board reports and not based on opinion.</p>
51:19-52:11; 52:19-53:15	<p>See above. In addition, the calculations demonstrate a range of income levels based on the latest Board annual report from 2018 using a range of pilot assignment productivity from the lowest producing pilot to the highest producing pilot per the 2018 PSP reports to the Board. Since pilotage service workloads and income targets are being used as an elements of a proposal, then it is relevant to show a range of income outcomes of the workload range using the most recent Board report in order to facilitate a more informed assessment of the tariff by UTC.</p>
57:26-58:9; 58:19-60:7.	<p>See above. PSP has made the workload of pilots central to setting a tariff and its scheduling management and internal operations the</p>

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	<p>basis for its request. Rebuttal of such an argument is clearly relevant to this proceeding. Capt. Moore simply relies on Board and PSP data to show ranges of possible distributions based on actual productivity reports provided to the public. A comparison of the facts which demonstrate actual scheduling and assignment practices rather than a one-sided reliance only on an average is completely relevant to any rate setting where the proponent argues that its internal operations and resulting workload is a relevant factor. Ratepayers have the obligation and standing to review the documents submitted in this proceeding and the records available to the public to state the facts associated with the contention made by the moving party. In this instance, Capt. Moore simply points out the inconsistencies in their arguments by relying on the facts rather than the averages relied upon by PSP. Moreover, we would reiterate, to the extent that any opinion is appropriate, Capt. Moore has participated in hearings before the Board on setting the number of pilots for nearly 20 years and has an expansive background on the history and practices of PSP with respect to the number of pilots necessary to complete a particular number of assignments. Outside of PSP and the Board, no one has more practical experience with the state's function of the setting of a number of pilots necessary to complete assignments than Capt. Moore.</p>
<p>62:18-64:7; 69:6 (commencing with "Or, worse still,...")-9; 70:11-71:8</p>	<p>See above. Capt. Moore is comparing Board-reported revenue per assignment and callback data in a spreadsheet based on exhibits which clearly outline the data relied upon and the simple arithmetic upon which these observations are based. This testimony is of facts that are highlighting data that has been reported to the public by the state of Washington. Pointing out incentives and disincentives to address underperforming pilots is relevant to efficiency and determinations of the fairness and sufficiency of tariff which must avoid increasing incomes for underperforming pilots does not require expert statistical analysis or a Ph.D. in Economics. These are simple trends with simple variables outlined in regularly discussed and understood metrics compiled by the Board. Most recently all of these trends were discussed in detail and with specificity in 2019 by Capt. Moore before the Board, which solicited his input on behalf of ratepayers.</p>
<p>67²⁹: 24 (commencing with "A</p>	<p>See above. Capt. Moore makes the observation of the fact that the PSP watch system allows an underperforming pilot to continue to underperform by refusing a callback off watch when that pilot's on</p>

²⁹ PSP's motion lists this as page 24, but the text occurs at p. 67, so the citation has been corrected here.

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pilot that is health”)-68:2 (ending with “...they had worked.”)	watch productivity has been low. Capt. Moore makes the conclusion that this is essentially paying a pilot for not working a full share of assignments and then expresses PMSA’s position that asking ratepayers to pay higher rates for more theoretical pilot positions when the existing pilots are not working a full share is mismanagement.
71:9-20; 71:26-73:3	Ratepayers have a right to specifically address the claims of PSP’s testimony. Capt. Moore points out the fact that simply by increasing the tariff on the belief that there may be additional pilots, as recommended by Dr. Khawaja, is inconsistent with a conclusion or assumption that there is a correlation between setting the tariff and reducing callbacks. One need not be an expert to understand causality, or the lack thereof, or to identify when an argument is based on a flawed approach overlooking many other factors. PMSA also respectfully points out that Dr. Khawaja has decidedly less expertise than Capt. Moore with respect to analysis of the PSP assignment system. Dr. Khawaja admitted that he did not perform any independent analysis of the PSP dispatch system and relied on a third-party report which was based on an evaluation of fatigue, and not an evaluation of how to optimize pilotage service. To preclude Capt. Moore’s testimony would be to conclude that ratepayers have no interest in observing that there are more efficient ways to match pilots to assignments than the current practices reported by PSP.
99:7-12 (ending with “been implemented.”); 100:8-102:8	PSP has made pilot workload a central question of this tariff process. The questions here presented to Capt. Moore are about whether there are noticeable changes in maritime safety and how the pilotage business is conducted based on updated rest rules. The answer is “no” as users still order pilots as they did before. Capt. Moore observes the fact that PSP has already implemented expanded rest rules in 2015 and again in late 2018 with no rest rule violations. Capt. Moore’s extensive expertise in maritime safety and mariner regulation provides the basis for his conclusions with respect to the analysis of these facts. Moreover, as noted in PMSA Responses to PSP DR Nos. 155 and 156, a specific and detailed analysis of fatigue management based on “pilot availability” requires PSP to be able or willing to provide the actual available number of on-duty pilots each day and the reasons for on-duty pilot not being available for duty each day, but PSP objected to the provision of this data as an “undue burden.” (PSP Response to PMSA DR No. 86.) Without access to PSP data regarding the number of pilots actually available to pilot or when a rest period might have occurred, it is impossible to fully assess this issue and apparently equally impossible for PSP to prove that the change in

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	mandatory rest periods actually had any impact on the number of assignments that any pilot may safely perform because, according to its responses to PMSA's DR No. 86, it does not possess any such records and it would be unduly burdensome to create a searchable spreadsheet for the purpose of such an analysis. This lack of data production by PSP does not limit Capt. Moore's expertise with respect to an analysis of the factors associated with mariner performance and competency, issues clearly within his scope of knowledge.