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BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

DOCKET TP-190976

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

TESTIMONY OF
Witness: Capt. Michael Moore
ON BEHALF OF
PACIFIC MERCHANT SHIPPING ASSOCIATION

**Current Tariff, Pilotage Assignments, Pilotage Conditions, Trainees, Tariff
Structure, PSP Expenses, State Competitiveness, General Observations,
PMSA Recommendations**

MAY 27, 2020

Revised July 8, 2020

TESTIMONY OF CAPT. MICHAEL MOORE
Docket TP-190976

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1 **I. INTRODUCTION**

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

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

5 **A. Pacific Merchant Shipping Association’s Interest in this Proceeding**

6 Q: Describe the Pacific Merchant Shipping Association.

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

11 Q: Describe the interest of PMSA in this present proceeding.

12 A: PMSA represents ocean carriers and vessel operators which are consumers of the
13 services provided by state-licensed pilots. PMSA is an interested stakeholder in this
14 proceeding as a representative of its member companies which are required to pay state-
15 licensed pilots the rates established by the tariff, and appears in this proceeding (Docket
16 TP-190976) pursuant to Order No. 2, issued December 17, 2019.

17 **B. Background of Witness**

18 Q: Provide a brief description of your educational background.

19 A: I graduated from the Coast Guard Academy in 1977 with a Bachelor of Science in
20 Mathematical Science. Post-graduation I completed training regarding Rules of the Road,
21 Navigation, and Bridge Team Training with the US Navy, and Explosives and
22 Demolition training with the US Marine Corps for application in icebreaking scenarios,
23 in addition to training in marine inspection, investigations, waterways management,
24 emergency response, oil spill response, contingency planning, media training and
25 leadership. I earned a Master of Marine Affairs degree at the University of Washington
26 School of Marine Affairs, along with a certificate from the University of Washington

1 Business School, in 1991. A copy of my CV is attached to this testimony. [Exh. MM-2]

2 Q: Please describe your initial Coast Guard service and experience.

3 A: After the Academy, my first assignment was as Deck Watch Officer and later Operations
4 Officer on the first crew for the icebreaker USCGC Polar Sea stationed in Seattle, WA at
5 Pier 36. This assignment included navigation and bridge watch duties, conning the
6 vessel, and leading the bridge team.

7 Q: Please describe the nature of your subsequent assignments in the Coast Guard.

8 A: After completing assignment on the Polar Sea, my positions and duties ran the entire
9 spectrum of marine safety, including waterways management, investigations,
10 inspections, plan review, pollution response, and preparation for and response to port,
11 ship and maritime emergencies including responsibilities for maritime security
12 highlighted in the post 9-11 world. My officer duties included both watchstanding and
13 managing watchstanding systems and over the course of my career spanned the setting
14 and adjusting of watch schedules on a ship underway or in port, 24 hours operations
15 centers, 24 hour vessel traffic centers, on call duty, and managing leave, sick leave,
16 training and temporary duty assignments while meeting the fluctuating demands of a
17 multi-mission agency.

18 My career with the Coast Guard concluded upon serving as Captain of the Port,
19 Puget Sound. The Captain of the Port position comes with an exhaustive list of duties
20 ranging from waterways management, supervising the Vessel Traffic Service, mitigating
21 risk of vessel transits and incidents, inspections and examinations of U.S. and Foreign
22 vessels, and responding to all reports of pollution, maritime security and much more. I
23 also developed and implemented numerous port procedures to augment regulations and
24 enhance safety. I supervised the Regional Exam Center, where I worked earlier in my
25 career, which issues licenses through examinations including first class pilotage
26 endorsements required by all Puget Sound pilots as well as WSF masters and mates, in

1 Puget Sound.

2 Q: In those positions held with the United States Coast Guard, please describe your
3 experiences licensing, regulating, investigating, disciplining, and working with pilots.

4 A: As a licensing officer, I have created, proctored, and graded numerous exams regarding
5 rules of the road, radar observer endorsements, and pilotage charts, amongst other
6 navigation and waterways safety topics. It was my responsibility to ultimately evaluate
7 the pilotage endorsement exams, including chart exams, and determine whether an
8 applicant passed or failed.

9 As a regulator, I investigated casualties including those involving mariners
10 holding pilotage endorsements including masters, mates, and state-licensed pilots. This
11 required determining what caused the incident in part by interviewing those involved to
12 help make that determination with follow on actions recommended to hold those
13 involved accountable if necessary and to recommend other actions to prevent recurrence.
14 For example, I conducted the investigation the January of 1981 collision between the
15 WSF FERRY KLAHOWYA and the outbound Liberian-flag freighter MV SANKO
16 GRAIN with a Puget Sound pilot at the con.

17 In my capacity as Chief of Port Operations in LA/LB all pilotage grounds in our
18 area of responsibility operated exclusively under federal pilotage endorsements. We
19 worked with pilots, tugs and others to develop standards of care for tug escorts,
20 underkeel clearance, movement in limited visibility, anchoring management and many
21 others and also reviewed internal pilot procedures and training, use of simulators for
22 waterway development and to plan for larger ship calls on the horizon and of course in
23 how we dealt with incident and near miss investigations and corrective actions. I had a
24 particularly close working relationship with the Jacobsen Pilotage Service, the Port of
25 Long Beach, and the Port of Los Angeles to develop a Harbor Safety Plan, voluntary tug
26 escort standards, technology introduction to help pilots in the San Pedro Bay to safely

1 transit and dock/undock with increasingly larger vessels in relatively constricted
2 waterways and berths in a variety of weather conditions, and creation and management of
3 a new VTIS Coast Guard/Marine Exchange (now a VTS) which handled outside the
4 breakwater traffic. I provided supervision, Coast Guard personnel, training and COTP
5 decision making authority as needed including with respect to pilotage issues, which was
6 highlighted by necessary actions in response to a pilot strike at the Port of LA that lasted
7 more than 4 months. I worked to establish, and then was responsible for implementation
8 of, a safety zone so that a vessel of a certain size wanting to transit inside that zone
9 without a pilot could proceed upon Coast Guard review of whether the bridge team
10 possessed sufficient local knowledge of things like ongoing construction and dredging in
11 the port at that time. I was directly involved with adjusting ship schedules, developing
12 rest procedures, and facilitating safe and efficient vessel operations.

13 As Captain of the Port Puget Sound, I led the transition to the Harbor Safety
14 Committee to develop Standards of Care for the first Harbor Safety Plan, held quarterly
15 VTS/Pilot meetings to address improvements of the system, and reviewed vessel transits
16 of concern to determine ways to address those concerns. I regularly reviewed vessel
17 volumes and fluctuation of vessel traffic, monitored potential issues of fatigue and
18 workloads including sponsoring fatigue management studies for WSF and a review of
19 tug/barge watchstanding and rotation scenarios given a tug/barge allision with the 520
20 bridge. I also worked directly with the President of PSP on various studies and risk
21 assessments regarding ship traffic and on continuous improvement efforts to enhance
22 safety, and we worked closely in the aftermath of 9-11 regarding a host of scenarios and
23 procedures.

24 Q: Provide a brief description of your experience with navigational safety, vessel inspection,
25 and maritime law enforcement and maritime industry affairs with the US Coast Guard.

26 A: I taught marine science with a marine safety emphasis at the Coast Guard Academy and

1 taught cadets navigation both underway and in simulator settings. Aside from my time in
2 graduate school, I nearly always had a job which involved navigational safety and
3 interacting in all aspects of marine safety and related maritime operations, interacting
4 with stakeholders including industry in multiple Puget Sound tours. My additional
5 assignments in San Francisco, and LA-Long Beach included all California ports other
6 than San Diego including Humboldt Bay to the north and inland to Stockton and
7 Sacramento and oil terminals in Benicia and Martinez encompassing all types of cargo
8 operations as well as fishing, charter boats, harbor cruises, ferry operations, shipyards, oil
9 terminals and other facilities, offshore moorings, drilling rigs and all the activities one
10 might envision with ships, and terminals and port facilities.

11 Q: Provide a brief description of your experience with navigational safety, vessel inspection,
12 and maritime industry affairs since your retirement from service with the US Coast
13 Guard and during your tenure with PMSA.

14 A: I have remained involved in work to achieve the goals of safe, efficient, and
15 environmentally sound marine transportation and remain aligned with experience from
16 my Coast Guard jobs in my present responsibilities. I have maintained participation on
17 the Harbor Safety Committee as Operations Chair and serve on the Executive
18 Committee, serve on various oil spill prevention or response committees/groups and
19 participate in risk studies around vessel traffic, serve on the state ballast water work
20 group, ports air emissions advisory group, and am currently involved with several risk
21 mitigation projects in Canada regarding vessel traffic at their request. I chair the
22 Emergency Response Towing Vessel Compliance Group providing a tug stationed at
23 Neah Bay to mitigate risk of any vessel in trouble. I am proud to serve as Chair of the
24 *Alaska Maritime Prevention & Response Network which provides an oil spill prevention*
25 *and response system serving vessels on the Great Circle route to and from Asia with*
26 *routing procedures, early detection of problems and response capacity. The Coast Guard*

1 *just recognized the Network's outstanding achievements in marine environmental*
2 *protection to support safe, sustainable shipping by awarding the prestigious, top-level*
3 *Rear Admiral William M. Benkert Marine Environmental Protection Osprey Award of*
4 *Excellence. The Coast Guard only selects one organization nation-wide every two years*
5 *for this coveted award. I serve in both the ECHO program out of the Port of Vancouver*
6 *and on the Quiet Sound group in Puget Sound both dealing with mitigation of vessel*
7 *traffic noise impacts on Southern Resident Killer Whales primarily through targeted*
8 *slow-downs while technology on noise suppression is introduced.*

9 Q: Describe your experience in the types of pilotage rate issues involved in these tariff
10 proceedings since your retirement from service with the US Coast Guard including the
11 provision of testimony in similar pilotage tariff proceedings before and in what
12 jurisdictions?

13 A: Yes. From 2006 to present I have testified as the lead industry representative on behalf of
14 PMSA in each of the rate setting processes held by the Washington state Board of
15 Pilotage Commissioners. In 2010, I testified in a rate setting hearing held by the
16 California state Board of Pilot Commissioners, where I appeared as an expert witness on
17 behalf of PMSA.

18 Q: Have you testified as an expert witness before or otherwise participated in any other
19 types of cases related to navigational safety?

20 A: I have participated in formal hearings regarding mariner's licenses or documents as lead
21 investigator for a major marine casualty on behalf of the United States government. I
22 have participated in producing findings and recommendations for consideration by the
23 Commandant with respect to Coast Guard legal and operational matters. I have testified
24 before the United States Senate regarding maritime security issues and other core US
25 Coast Guard Captain of the Port missions.

26

1 **II. PURPOSE AND SUMMARY OF TESTIMONY**

2 Q: Please provide a brief summary of PMSA’s position with respect to this rate-setting
3 proceeding.

4 A: On behalf of consumers of the services provided under the State of Washington
5 compulsory pilotage system, PMSA has intervened in opposition to the Puget Sound
6 Pilots (“PSP”) Petition to increase and revise the current tariff. The existing tariff sets the
7 cost of services for ocean-going vessels utilizing a state licensed pilot in the Puget
8 Sound. PMSA opposes the PSP Petition to increase pilotage rates because the current
9 tariff is producing more than sufficient revenue to accommodate the provision of safe,
10 fully regulated, efficient, and competent pilotage service in the Puget Sound. PSP has not
11 demonstrated that the current rates are insufficient to provide safe, fully regulated,
12 efficient and competent pilotage service or that they are unfair, unjust, or unreasonable
13 and on that basis, this Petition should be denied.

14 Q: Provide a brief summary of the scope and purpose of your testimony on this matter.

15 A: My testimony consists of three main points.

16 **First**, PSP has not proven its case for any increases in the tariff rates charged to
17 vessels for the provision of state compulsory pilotage. The current tariff rates generate
18 record high revenues per unit of service provided. The current tariff rates are more than
19 sufficient to cover essential pilot expenses and supply robust individual pilot income
20 without any need for rate increases. PSP’s internal decisions about how, when, and in
21 what amount to share compensation amongst members - including for their own self-
22 created, inefficient, and unfunded internal deferred compensation agreements and
23 assignment policies - are immaterial to the cost of service. All costs of pilotage are
24 already adequately compensated for by vessels at the time of service under the current
25 tariff.

26 PSP does not present a compelling safety, operational, or policy basis for an

1 increased rate. PSP's requested increase is not based on any evidence of any significant
2 changes in the present conditions of pilotage, including any risks to pilots or vessels of
3 the provision of the pilotage service which are not already accounted for in the current
4 tariff and covered by current tariff revenues. PSP's projections of the need for additional
5 pilots, as well as its logic for why a rate increase is necessary to pay for an increase in the
6 number of pilots and increased non-essential expenses, are faulty, speculative,
7 conclusory, and unproven. PSP has not addressed basic policy considerations under the
8 Pilotage Act, including the need to consider and preserve the State's interests in
9 protecting and growing waterborne commerce and improving the competitive position of
10 seaports in the Puget Sound.

11 **Second**, PSP's Petition proposes numerous wholesale revisions and rewrites of
12 the present tariff structure without adequate explanation. Some of these revisions may
13 have merit individually, like reducing upper tonnage rates, but it is impossible to
14 determine from the testimony how and why PSP would seek to increase charges at one
15 rate on some vessels while others may change at completely different rates at different
16 times for different years. The rate of increase on numerous vessels is significant.
17 Moreover, given the wholesale revision and hundreds of non-identified changes, it is
18 facially impossible for PMSA, the UTC, or the public to divine if there are some
19 revisions which should be isolated as solely tied to rate increases and others which are
20 meant to solely be structural revisions; all are part of a tariff meant to result in significant
21 increases in pilot revenues. PMSA would welcome a tariff revision and restructuring
22 process which includes all stakeholders with the goal of creating a tariff which is simpler,
23 less opaque, and directly related to the costs of services. For such a process to be fair and
24 inclusive we recommend that the Commission direct such a process which is revenue
25 neutral.

26 **Third**, PSP's Petition was submitted prior to the current COVID-19 crisis.

1 Certainly, PSP could not have anticipated the pandemic and the resulting economic
2 disruption which is severely impacting the supply chain and port and maritime
3 operations. Nevertheless, these coronavirus impacts are significant, dynamic, rapidly
4 evolving, and material to the assumptions upon which this Petition is based. The
5 maritime industry has yet to find its new baseline or a stable operating environment and
6 is adapting to these dramatic disruptions to maritime commerce and changes in the fabric
7 of our entire global economy. Given the radical and fundamental changes posed by the
8 pandemic and current economic disruption, it is impossible to rely on most of the
9 economic presumptions or projections included in PSP’s original testimony.

10 **III. THE CURRENT TARIFF PROVIDES RATES THAT ARE FAIR, JUST,**
11 **REASONABLE, & SUFFICIENT**

12 **A. The Current Tariff Structure Is Fair, Just, Reasonable, & Sufficient**

13 Q: How would you describe the current tariff?

14 A: The current tariff imposes rates for pilotage services provided to vessels calling on ports
15 in the Puget Sound by pilots licensed by the state Board of Pilotage Commissioners
16 (“BPC”) under the state of Washington’s Pilotage Act at Chapter 88.16 RCW.

17 Q: What charges comprise the schedule of rates for pilotage services provided to vessels
18 under the current tariff?

19 A: The current tariff is a schedule of rates and charges which are imposed on various bases,
20 including per vessel call transits within the Puget Sound, the distance traveled within
21 different geographic zones of the Puget Sound, the tonnage and length overall of a
22 particular vessel, or a particular service provided to a vessel by a pilot. The current tariff
23 is published at WAC 363-116-300.

24 Q: What provisions under the Pilotage Act governed the creation of the current tariff?

25 A: Prior to the adoption of SSB 6519 (Chapter 107, Laws of 2018), the BPC was required to
26 “[a]nnually fix the pilotage tariffs for pilotage services provided under” the Pilotage Act.

1 RCW 88.16.035(1)(e).

2 Q: How long has the current tariff structure been in place?

3 A: The current tariff has been in place since July 1, 2015. The current tariff was adopted by
4 the BPC for the period July 1, 2015 through June 30, 2016. At tariff hearings held on
5 May 12, 2016 and November 10, 2016 the Board of Pilotage Commissioners did not
6 support any changes in the current tariff and extended its terms with an effective period
7 through December 31, 2017. Thereafter, the only tariff actions in 2017 and 2018 were
8 rolling over the effective dates of the Puget Sound Pilotage District Tariff through 2018
9 and subsequently extending the current tariff through 2019. In 2018, the Legislature
10 transferred rate setting responsibilities to the Utilities and Transportation Commission
11 and enacted RCW 81.116.050, which concluded that the “tariffs established by the board
12 prior to July 1, 2019, shall remain in effect and be deemed pilotage tariffs set by the
13 commission until such time as they are changed by the commission pursuant to this
14 chapter.” As a result, the current tariff is essentially the same tariff effective on July 1,
15 2015, providing for no substantive changes in the tariff rates.

16 Q: Is the current tariff is fair, just, reasonable, and sufficient?

17 A: It is fair, just, reasonable, and more than sufficient. Since the Washington State
18 Legislature has determined that the only way in which the UTC may enact a tariff is to
19 “ensure that the tariffs provide rates that are fair, just, reasonable and sufficient for the
20 provision of pilotage services,” (RCW 81.116.020(3)), and because any “tariffs
21 established by the board [of pilotage commissioners] prior to July 1, 2019 shall remain in
22 effect and be deemed pilotage tariffs set by the commission until such time as they are
23 changed by the commission,” (RCW 81.116.050), the Legislature has adjudged the
24 current tariff to be treated as fair, just, reasonable, and sufficient for the provision of
25 pilotage services until proven otherwise by a Petitioner to the UTC.

26

1 **B. The Current Tariff Generates Record High Revenues for Pilots**

2 Q: Can you provide a simple but accurate explanation of what the pilotage tariff is?

3 A: The current pilotage tariff, as well as all previous pilotage tariffs, is a schedule of all of
4 the mandatory charges set by the State of Washington to be billed by a state licensed
5 pilot to an ocean-going vessel in exchange for services rendered to that vessel by the
6 pilot.

7 Q: Is a pilot allowed to charge, or is a vessel allowed to pay, a charge for a service rendered
8 which is not listed in the current schedule of pilotage charges in the tariff?

9 A: No. Pursuant to RCW 88.16.120 and WAC 363-116-300, the charges established by the
10 tariff are the only costs to be paid by a vessel in exchange for a vessel service.

11 Q: Is there a way to measure the average charge paid under the pilotage tariff by a vessel for
12 a pilot's services?

13 A: There are hundreds of potential vessel movement services with specific rates covered by
14 the tariff. The best measure of the average charge which is paid by a vessel after being
15 moved by a pilot under the pilotage tariff is the "Average Revenue per Vessel Move".

16 Q: What is the significance of measuring the Average Revenue per Vessel Move?

17 A: The Average Revenue per Vessel Move is the most direct, simple, and accurate
18 expression of the application of tariff rates to pilotage services provided to a vessel when
19 it requires to be moved.

20 Q: What was the most recent annual Average Revenue per Vessel Move under the current
21 tariff?

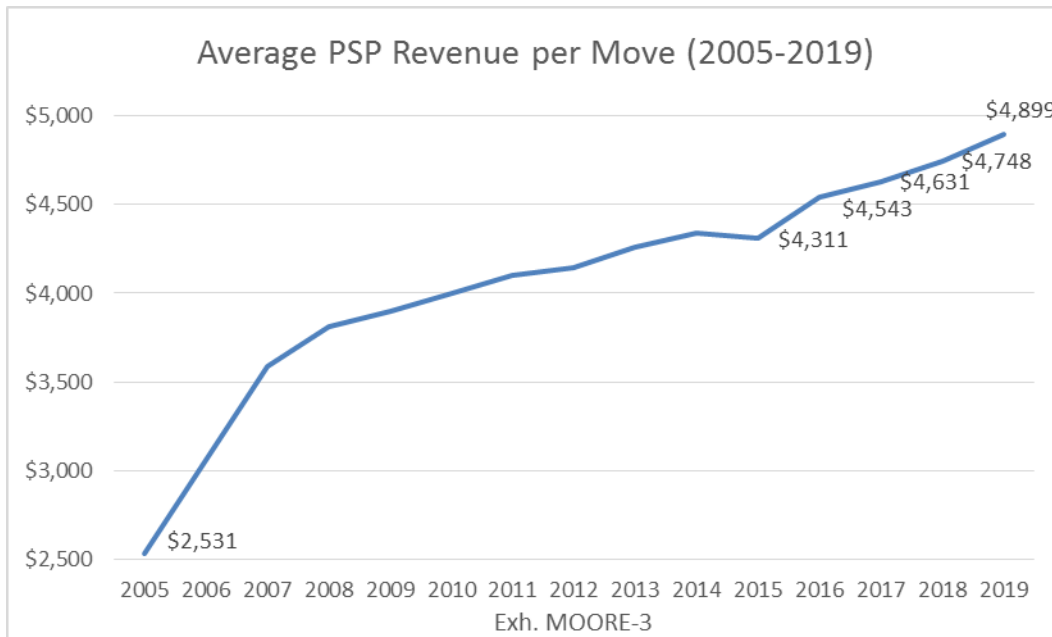
22 A: In 2019, the Average Revenue per Vessel Move was \$4,899. [Exh. MM-3]

23 Q: What is the history of the Average Revenue per Vessel Move?

24 A: From 2005 to 2019, Average Revenue per Vessel Move has increased by 93.6%, from
25 \$2,531 to \$4,899. [Exh. MM-03]

26

1 Figure A. Average PSP Revenue Per Move (2005-2019)



12

13 Q: Under the current tariff, which has remained unchanged since 2015, describe how

14 Average Revenue per Vessel Move has increased.

15 A: From 2015 to 2019, Average Revenue per Vessel Move has increased by 13.6%, from

16 \$4,311 to \$4,899. [Exh. MM-03]

17 Q: Under the current tariff, how much has Average Revenue per Vessel Move increased

18 during the PSP Test Period?

19 A: The PSP Test Period crosses two annual periods, 2018 and 2019, so accounting for both

20 years here Average Revenue per Vessel Move has naturally increased 3.2% from 2018 to

21 2019 without any increase in the tariff. [Exh. MM-03]

22 Q: Has the Average Revenue per Vessel Move ever been higher than under the current

23 tariff?

24 A: No, at \$4,899 the Average Revenue per Vessel Move is at a record high and the average

25 pilot in the Puget Sound has never generated more revenue per vessel move than in 2019.

26 Or put another way, no pilotage tariff has ever generated a higher average charge to

1 pilotage customers than the current tariff did in 2019.

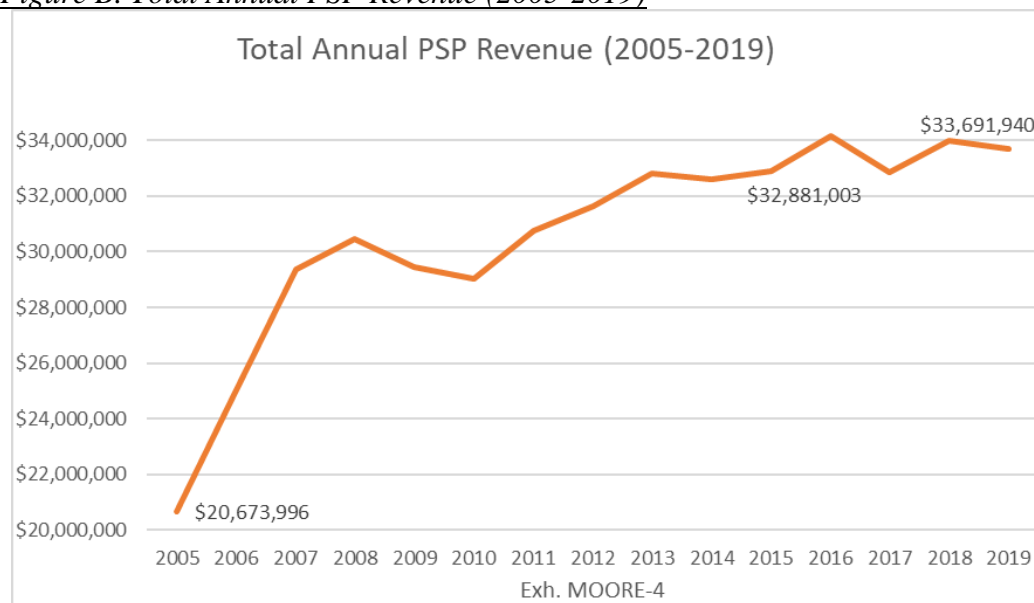
2 **C. Tariffs Generate Naturally Increasing Revenues Over Time Even Without Rate**
3 **Increases**

4 Q: Please describe historic annual total revenues generated by the Puget Sound pilotage
5 tariff structure and how they have changed over time.

6 A: Total pilotage revenues have increased significantly despite significant decreases in ship
7 calls, pilot assignments, and workload. In total, pilot revenues have grown over time
8 from \$20,673,996 in 2005 to \$33,691,940 in 2019, representing an increase of 63%.

9 [Exh. MM-04]

10
11 Figure B. Total Annual PSP Revenue (2005-2019)

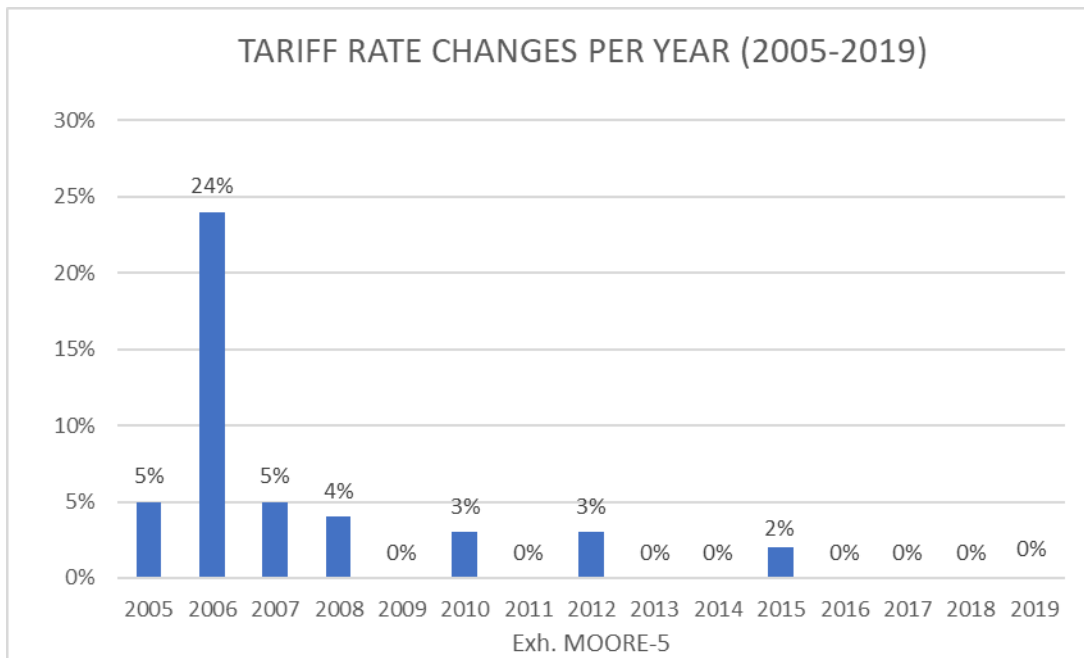


22 Q: Describe how the historic rates in the pilotage tariff have changed from 2005 to 2019?

23 A: Tariff rates have been increased by 46% from 2005 to 2019. [Exh. MM-05] Most of the
24 tariff increase occurred in one large tariff spike in 2006 which occurred after tariff
25 decreases in preceding years under a formula agreement prompted PSP to cancel the
26 prior rate agreement. Since 2006, there have been more years without a rate increase than

1 with one, and when there have been rate increases they have tended to be relatively
2 small. Nevertheless, when these percentage increases are applied to actual tariff rates
3 over time, they have compounding effect, whereby this results in a cumulative increase
4 of 53.85%.

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



17 Q: Please summarize and compare growth in pilotage revenues and rates historically from
18 2005 to 2019.

19 A: From 2005 to 2019, Average Revenue per Vessel Move revenues increased by 93.6%
20 while rates increased by 53.85% compounded. [Exh. MM-03, Exh. MM-05]

21 Q: How does tariff revenue grow so substantially faster than the tariff increases?

22 A: Pilot revenue grows naturally as a function of increasing Average Revenue per Vessel
23 Move whether or not the tariff is adjusted.

24 Q: Describe how this is true with respect to the current tariff period.

25 A: Under the current tariff, there have been no tariff increases beyond the 2% equivalent
26 minimum tonnage charge increase in 2015, yet the Average Revenue per Vessel Move

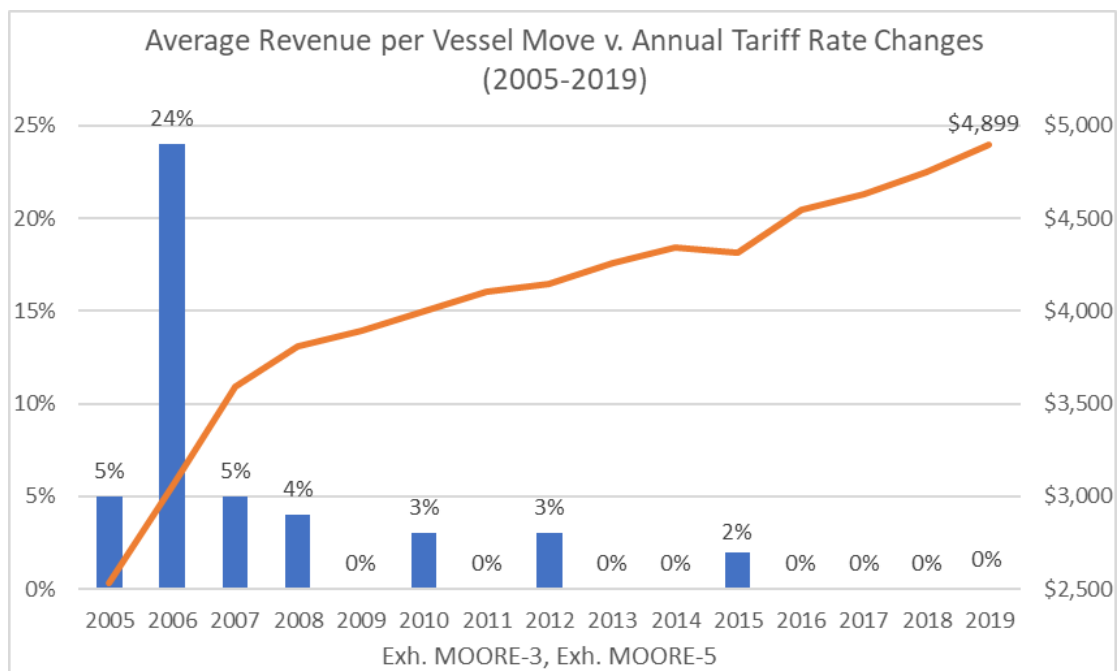
1 has nonetheless increased by 13.6% from calendar year 2015 through calendar year 2019.

2 [Exh. MM-03]

3 Q: Is this situation under the current tariff, where Average Revenue per Vessel Move is
4 increasing even during periods when the tariff is held flat, a pattern which is historically
5 consistent or is this pattern an anomaly?

6 A: This is consistent with the history of the Puget Sound pilotage tariff. The tariff has been
7 held flat many times - in 8 out of the past 15 years - while Average Revenue per Vessel
8 Move continues to increase over the period of 2005-2019. [Exh. MM-03, Exh. MM-05]

9 Figure D. Average Revenue per Vessel Move v. Annual Tariff Rate Changes (2005-2019)



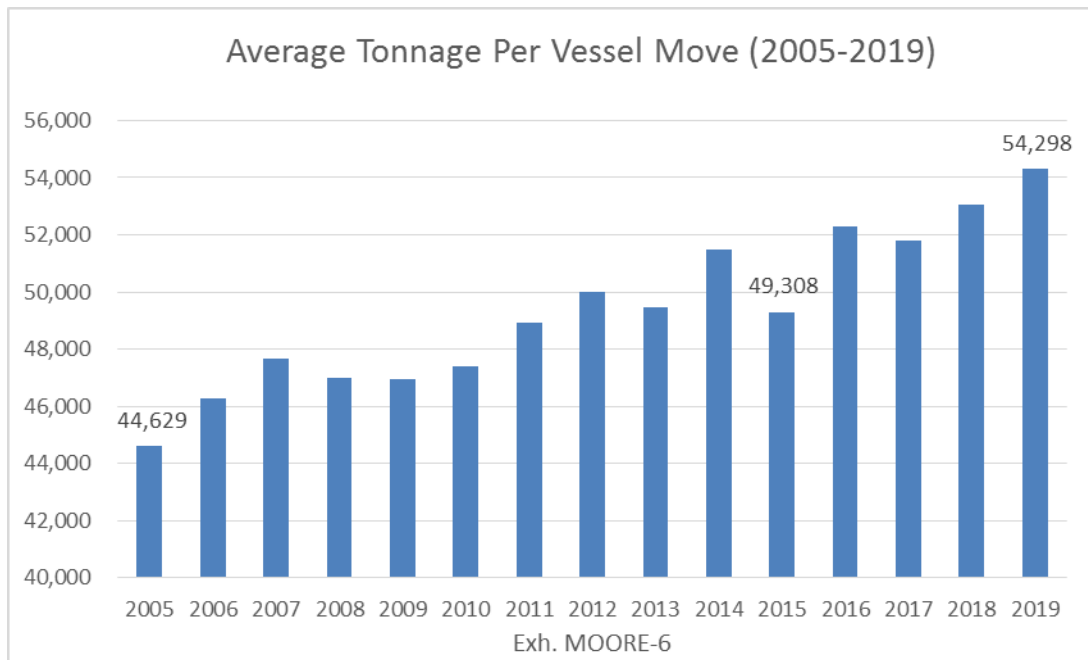
21 Q: Describe why increases in pilot revenues on an average per vessel basis regularly occur
22 even when rates are held constant.

23 A: Pilotage revenues increase naturally on an average per vessel basis due to the continuous
24 and regular trend of increases in ship sizes, particularly in the container and cruise
25 sectors. The tonnage charges escalate as a ship gets bigger such that the upper tonnage
26 tier rate is more than an order of magnitude greater than the lower tonnage tier.

1 Q: Describe in detail the trend towards larger ship sizes.

2 A: Historically, the average size per vessel of ships calling on Puget Sound seaports has
3 consistently increased over time. From 2005 to 2019, the average tonnage of a vessel has
4 increased by 21.7%. [Exh. MM-06]

5 Figure E. Average Tonnage per Vessel Move (2005-2019)



17 Q: What is the impact of the trend of larger ships regarding tariff?

18 A: As a result of this trend, there is a clear correlation between average vessel size and
19 increases in Average Revenue per Vessel Move. [Exh. MM-03, Exh. MM-06]

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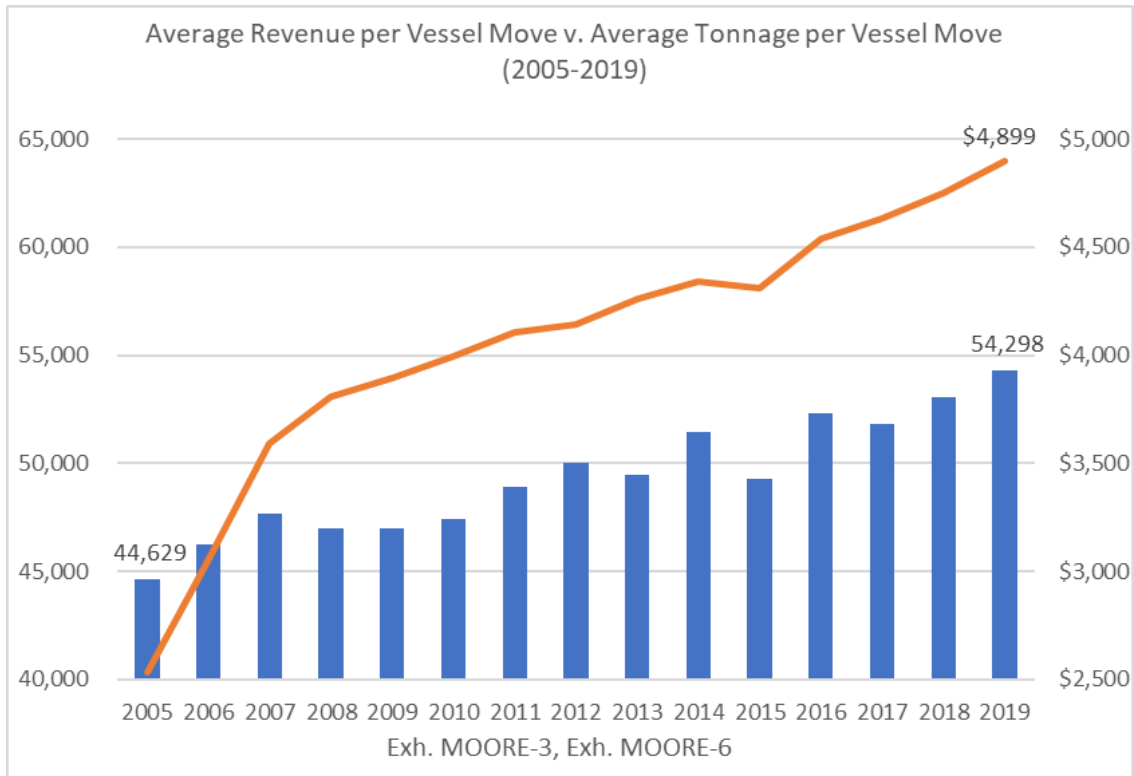
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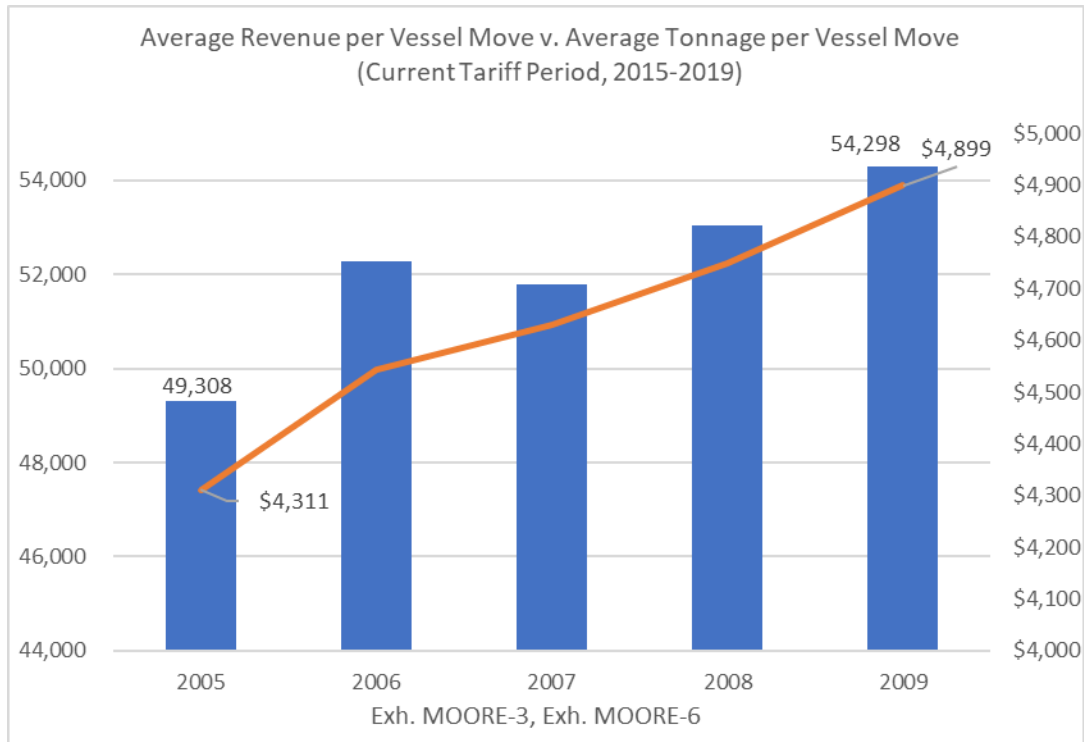
26 Figure F. Average Revenue per Vessel Move v. Average Tonnage per Vessel Move (2005-2019)



14 Q: Has this trend continued during the current tariff?

15 A: Yes, under the current tariff from 2015 to 2019, this strong historical correlation between
 16 the variable of average size per vessel and Average Revenue per Vessel Move has
 17 continued unabated. [Exh. MM-03, Exh. MM-06]

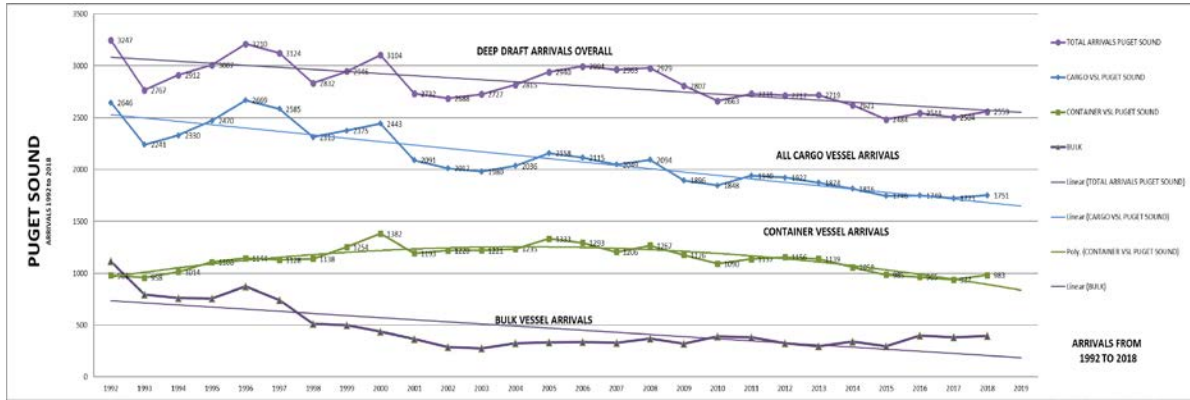
26 Figure G. Average Revenue Per Move v. Average Tonnage Per Move (2015-2019)



Q: Is growth in the number of ships which are coming to do business at the seaports of the Puget Sound a variable which contributes to increases in pilot revenues?

A: Not under the current tariff, as in fact, we have been losing ship calls consistently for over a decade and saw only 2,554 vessel arrivals in 2019. Relative to the history of our vessel traffic on record since 1992, according to the Marine Exchange of Puget Sound, total vessel calls have never been lower than they have been during the current tariff period of 2015-2019. And, if one excludes cruise ships and articulated tug/barge units, the reductions in deep draft cargo ship would stand out even more significantly. [Exh. MM-07]

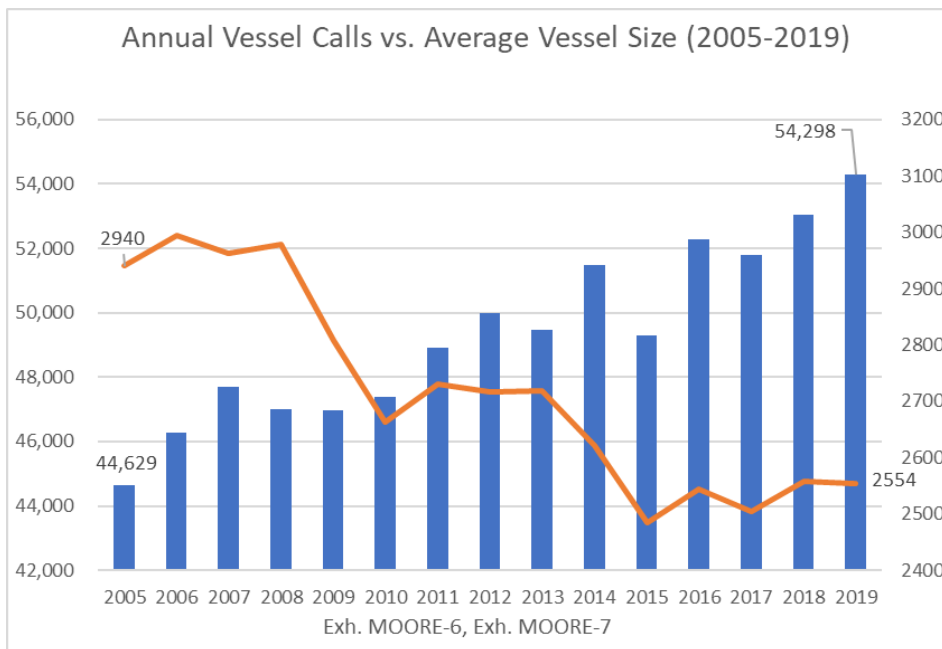
Figure H. Puget Sound Vessel Arrivals (1992-2018)



Q: If the number of vessel calls is steadily decreasing and are at all-time record lows during the current tariff period how can pilot revenues stay steady or continue to increase?

A: Recently the Puget Sound pilotage system has been experiencing a negative correlation between pilot revenues with the number of vessel calls. This negative correlation has occurred because as the number of vessels calling on Puget Sound seaports has slowly decreased over time while the size of vessels has continued to increase. [Exh. MM-06, Exh. MM-07]

Figure I. Average PSP Revenue Per Move (2005-2019)



1 Q: Do these trends of larger per vessel size and lower overall vessel calls hold true when
2 comparing the data from the current tariff period with historical averages?

3 A: Yes, with the caveat that the overall number of vessel calls has plateaued during this
4 period at historic lows, but the decline continued for non-cruise deep draft cargo vessels.
5 Nonetheless, the average size of vessels in 2015-2019 continued to increase to record
6 highs, with the Puget Sound welcoming its largest vessels ever, in a trend which is
7 definitively not positively-correlated with the number of vessel calls which remained at
8 historic lows.

9 Q: Historically, including the 2015 to 2019 current tariff period, which of the following
10 variables has shown the most positive correlation with increasing pilot revenues: tariff
11 rate changes, the number of vessel calls, or changes in the size of vessels?

12 A: Changes in the size of vessels shows the most positive correlation with increases in
13 average pilot revenues.

14 Q: Given this correlation, what is your conclusion regarding whether a rate increase is
15 required in order to raise pilot revenues?

16 A: It is unnecessary to raise the rates in the Puget Sound pilotage tariff in order for pilots to
17 see increases in their revenues per vessel move.

18 **D. Already Record High Pilotage Revenues per Vessel Call Will Continue to Increase**
19 **with Unchanged Tariff**

20 Q: Do you believe that the Average Revenue per Vessel Call will continue to increase under
21 the current tariff without any changes or increases in the rates?

22 A: Yes, as there is no reason to believe that the historic global trend of the average size of
23 vessels continuously and steadily getting larger will not continue, and we expect that the
24 average size of vessels continuously and steadily calling in the Puget Sound will continue
25 to get larger as well. Due to the tariff structure this will naturally result in continued
26 increases in Average Revenue per Vessel Move.

1 Q: With respect to containerships, aside from reliance on hindcasting and the current trends
2 do you have a basis for belief in the continued growth of container vessel size in the near
3 future?

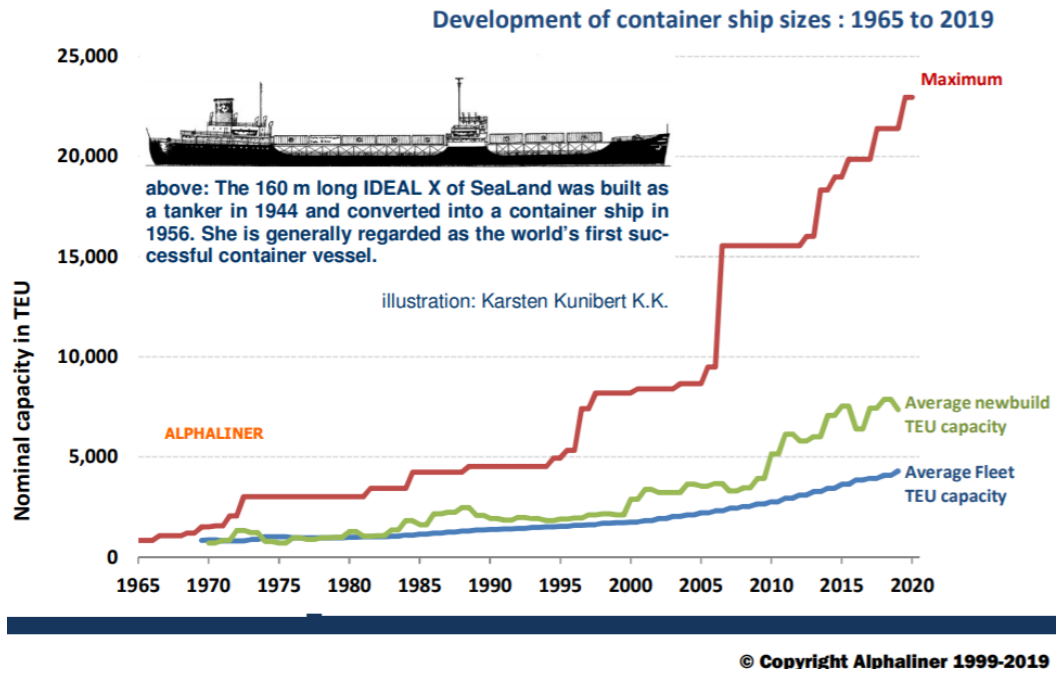
4 A: Yes. This continued growth is universally well known and understood in the maritime
5 industry and acknowledged by PSP. With respect to container vessels, industry
6 economics consistently push towards lower unit costs along with economies of scale for
7 cargo owner customers. As the current average new-build container ship capacity
8 (measured in twenty-foot equivalent units (TEUs)) is higher than the current year average
9 fleet TEU capacity, the historical trend of the global container fleet consistently getting
10 larger on average has accordingly continued unabated through 2020. This will result in
11 average fleet sizes continuing to increase.

12 This trend was recently summarized in an Alphaliner publication which
13 demonstrated average new-build TEU capacity significantly higher than average, and
14 maximum vessel sizes continuing to increase. [Exh. MM-08]

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Figure J. Development of Containership Sizes (1965-2019))

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Q: What was the largest vessel to call the Puget Sound, what was this vessel charged for pilotage, and did it arrive during the current tariff?

A: The largest vessel to call the Puget Sound was the CMA CGM Benjamin Franklin, which called in March 2016, which means she paid pilotage under the current tariff. The total round-trip pilotage charge for this vessel calling on the Port of Seattle was \$40,229.32 (\$20,099.66 inbound and \$20,129.66 outbound). [PSP_3150-PSP_3153]

Q: As containerships are getting larger in general and paying higher Average Revenue per Vessel Move, has there been an increase in Average Revenue per Vessel Move for container vessels during the current tariff period?

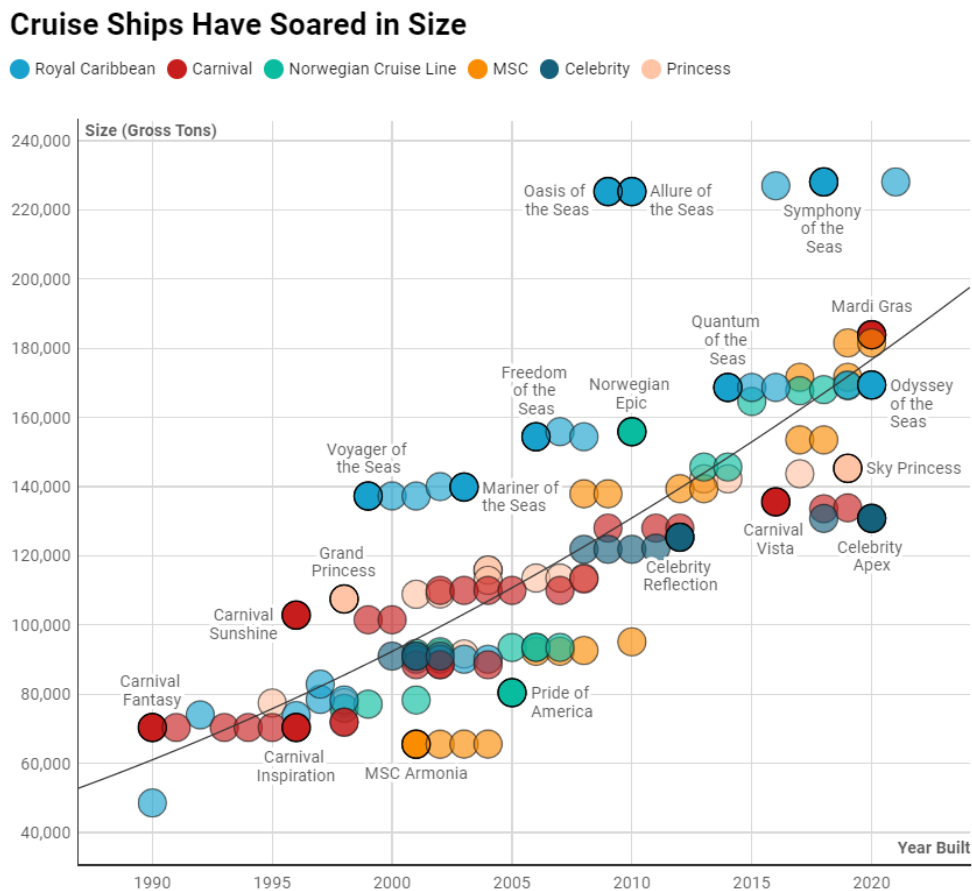
A: The Average Revenue per Container Vessel Move has increased from \$5,656 in 2017, and \$5,833 in 2018, to \$6,059 in 2019. [Exh. MM-09]

Q: With respect to cruise ships, aside from reliance on hindcasting and the current trends do you have a basis for belief in the continued growth of cruise vessel size in the near future?

A: Yes. Growth in the size of cruise vessels is well documented and understood across the

1 maritime industry, amongst maritime industry analysis, and in the trade press and
2 continues unabated. [Exh. MM-10]

3
4 Figure K. Cruise Ships Have Soared in Size (1990-2020)



19
20 Q: Describe the average increase in Average Revenue per Vessel Move for cruise vessels.

21 A: The Average Revenue per Cruise Vessel Move has increased from \$9,088 in 2017, and
22 \$9,310 in 2018, to \$11,042 in 2019. [Exh. MM-11]

23 **E. Puget Sound Pilots Earn Record High Average Revenues Even While Providing**
24 **Fewer Vessel Services Under the Current Tariff**

25 Q: If under the current tariff pilots have never earned higher average revenues per move,
26 then are they also providing higher than average services to vessels?

1 A: No, while pilots in Puget Sound in 2019 enjoyed record-high per-vessel move revenues
2 of \$4,899 on average, they spent less time piloting than in prior years.

3 Q: How does this correlate to pilot assignments and workloads?

4 A: As the number of vessels declines but is inversely correlated with increased pilot
5 revenues, we are left with simple arithmetic: if you make more money while doing less
6 work, then your average pay has increased.

7 Q: As a matter of industry economics, why are pilots' average earnings increasing if they
8 are actually doing fewer jobs?

9 A: As individual ships get larger and move more cargo per vessel, over time this trend is
10 replicated across multiple fleets and carriers, and over time the macro result is that more
11 cargo can be moved with fewer vessels. The current tariff requires larger vessels to pay
12 much higher pilotage costs per an average-sized vessel. The relative increases in tariff
13 revenues from larger ships are so dramatic that the increased revenues from larger ships
14 more than offset the revenues lost by piloting fewer ships.

15 Q: Describe what metrics would best account for pilot revenues increasing per unit of
16 pilotage service provided.

17 A: The two most comprehensive metrics for evaluating pilot revenues per unit of work
18 necessary to provide a vessel move are either Average Revenue Per Assignment or
19 Average Revenue Per Bridge Hour. Both measure slightly different bases of how often a
20 pilot is actually providing the services necessary to move a vessel under the current tariff.

21 Q: Describe Average Revenue Per Assignment.

22 A: Average Revenue Per Assignment accounts for the fact that vessels only pay for and only
23 receive pilotage services upon a pilot being assigned a job by PSP. The pilotage
24 "Assignment" is a standard work metric used by PSP to evaluate their own work-cycles,
25 as defined at §3.8 of the PSP By-Laws. Both Assignments and Revenue Per Assignment
26 is tracked in BPC Spreadsheets based on reports from the pilots required by the Pilotage

1 Act. [Exh. JR-09]

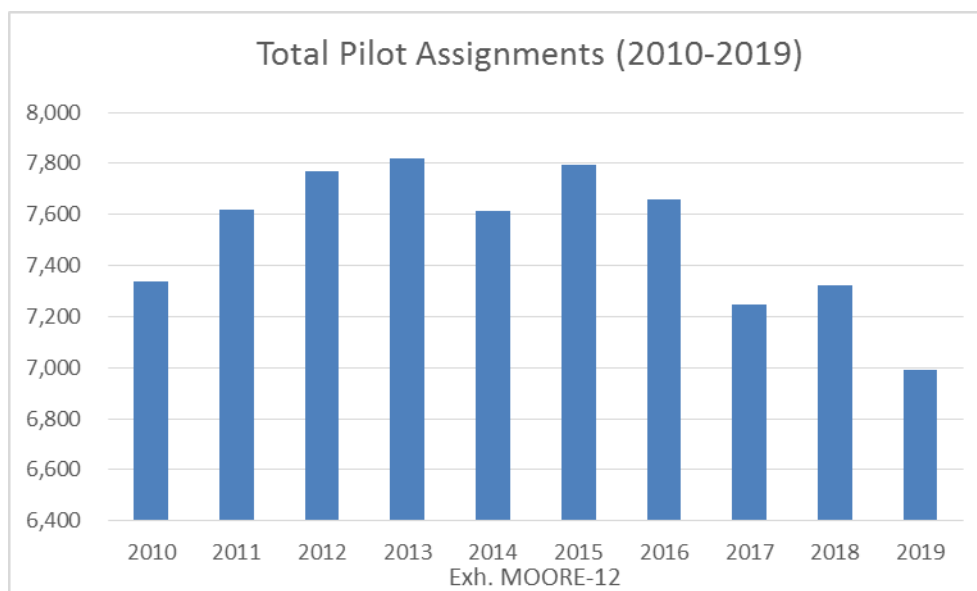
2 Q: Describe Average Revenue per Bridge Hour.

3 A: Average Revenue Per Bridge Hour accounts for the fact that not every vessel assignment
4 is created equal - for example, some assignments may involve long stretches of open
5 waterway transits while other assignments may be of a very short duration in time. The
6 pilotage “bridge hour” is a work metric which aligns with provisions in the tariff related
7 to vessel efficiency and in the Pilotage Act related to limitations on pilotage hours of
8 service and rest. “Bridge Hour” is used to evaluate pilot workload and is tracked in the
9 PSP submission work papers with respect to Revenue Calculations. (PSP Exh. WTB-11)

10 Q: Describe how Average Revenue Per Assignment has historically changed over time in
11 the Puget Sound.

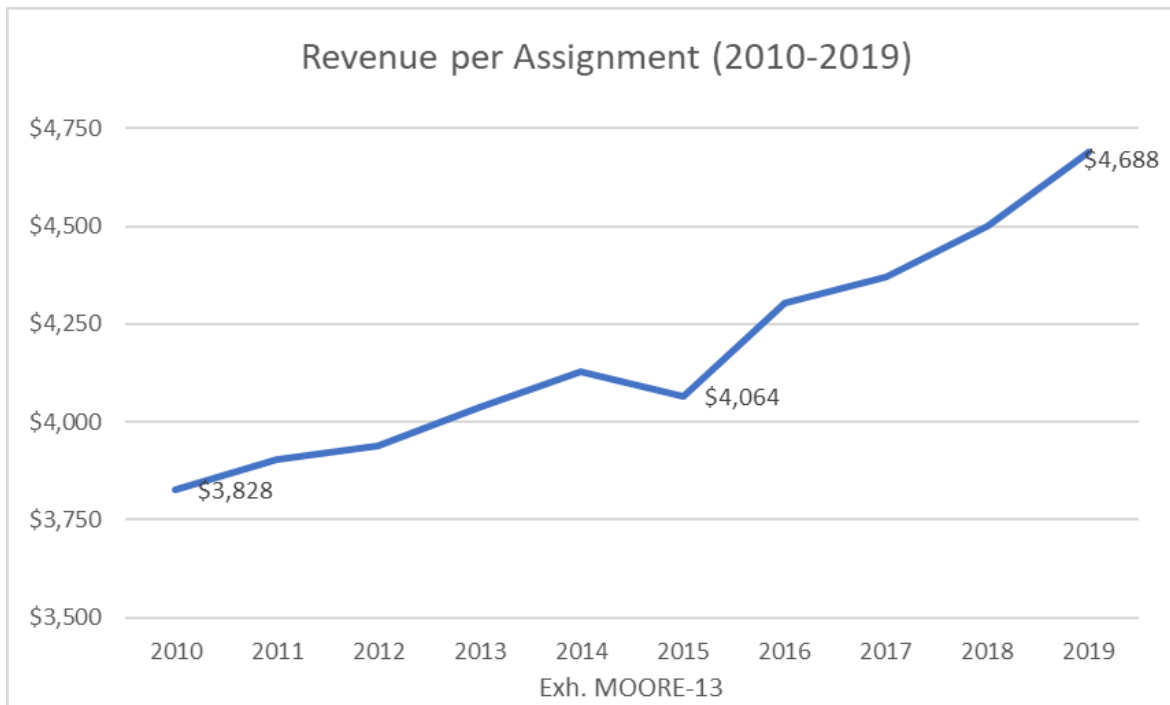
12 A: Assignments grew slightly from 2010 to 2013 but they have since decreased to the
13 present record low period we are experiencing now during the current tariff period. The
14 reduction of vessel calls, and reduced demand for pilotage services, has also resulted in a
15 plateau at decreased levels in overall pilot assignments as well. [Exh. MM-12]

16 Figure L. Total Pilot Assignments (2010-2019)



1 As vessels have gotten larger and pilot assignments have decreased, Average Revenue
2 Per Assignment has steadily increased over time from \$3,828 in 2010 to \$4,688 in 2019,
3 a record high. [Exh. MM-13]

4 Figure M. Revenue per Assignments (2010-2019)



16

17 Q: Do these historical trends hold true for the recent period under the current tariff where
18 existing rates that have been held constant since 2015?

19 A: Yes. The Average Revenue Per Assignment increased by 15%, from \$4,064 in 2015 to
20 \$4,688 in 2019, even though the rates were held unchanged over this period. [Exh. MM-
21 13]

22 Q: Describe how pilot Bridge Hours have historically changed over time in the Puget
23 Sound.

24 A: We do not have historic data for pilot Bridge Hours available to analyze.

25 Q: How are you able to analyze Bridge Hours for your testimony if it is not historically
26 available?

1 A: PSP was required to submit its projected revenue calculations as part of this petition and
2 Bridge Hours is a subset field of the Revenue Calculations spreadsheet at PSP Exh.
3 WTB-11. Thus, there is only one year of data available for PMSA to analyze, but we
4 have done so for the purposes of this testimony.

5 Q: What were the total pilot Bridge Hours for the 2018-2019 PSP Revenue Calculation
6 period?

7 A: After making some adjustments for anomalies in PSP Exh. WTB-11, which included
8 negative bridge hours for some vessel moves, the total Bridge Hours in the 2018-2019
9 test period were 34,886.63 hours, and average Bridge Hours per move were 5.03 hours.
10 [Exh. MM-14]

11 Q: Did you calculate Bridge Hour revenues from these totals?

12 A: Yes, after adjustment, the Average Revenue Per Bridge Hour was calculated at \$971.69.
13 [Exh. MM-15]

14 Q: Can you confirm the accuracy of your adjustment methodology?

15 A: Yes, to confirm the accuracy of both PSP Exh. WTB-11 and the PMSA adjustments, by
16 applying the average of 5.03 hours per move to the \$971.69 Average Revenue per Move
17 on a Bridge Hour basis, the total is \$4,887.60, which is a close approximation of Average
18 Revenue per Move of \$4,899.

19 Q: When evaluating revenue earned by pilots for a unit of work associated with moving
20 vessels, does the current tariff present higher revenues than the historical averages?

21 A: Yes. The Average Revenue per Assignment in 2019 was the largest ever. Or put another
22 way, pilots have never been better compensated on a per job basis than they were in
23 2019.

24 **F. Under the Current Tariff Pilotage Revenues Are More Than Sufficient to Cover the**
25 **Organizational Overhead Costs of the Puget Sound Pilots**

26 Q: Does the current tariff structure produce revenue for pilots over and above growth in the

1 pilots' overhead and essential costs of doing business?

2 A: Yes. Revenues from the current tariff more than adequately cover the essential
3 operational expenses required to run the pilots' business through PSP.

4 Q: Does PMSA agree with PSP's general approach of sharing tariff revenue amongst pilots
5 to cover the overhead costs of doing business?

6 A: Generally, the concept that individual pilots have voluntarily organized themselves into
7 an association, in this case PSP, in order to share overhead and operating expenses is a
8 reasonable one, and we agree that tariff-setting should be done in a way that enables
9 pilots or pilot organizations to recover basic direct operating costs. For instance, PSP
10 provides essential elements of the pilots' business including dispatching, pilot boat
11 operations, equipment purchases, invoicing, collections, accounting, and other
12 administrative functions which are categories of essential expenses which are necessary
13 to provide pilotage service. Unfortunately, PMSA has also identified non-essential
14 expense elements that PSP seeks to cover with pilotage revenues, so with respect to
15 multiple expense items, PMSA disagrees with PSP's accounting of what should be
16 covered by the tariff as discussed in Section IX below.

17 Q: Setting aside the issue of expense recovery, for purposes of comparing pilotage revenues
18 with pilotage expenses generally, how might one account for a comparison of pilot
19 revenues and pilot expenses under the current tariff?

20 A: The simplest metric to measure whether PSP's revenues are growing faster than PSP's
21 expenses is to look at PSP's reported Net Income per Vessel Moved, because the Net
22 Income is the average result of PSP Total Revenue per Vessel Moved minus PSP
23 Expenses per Vessel Moved.

24 Q: What is the last year reviewed with respect to pilot expenses and net income?

25 A: We are using 2018 data with respect to the evaluation of pilot expenses and net income.

26 Q: Why is PMSA using 2018 data for evaluation of this expense category but using 2019

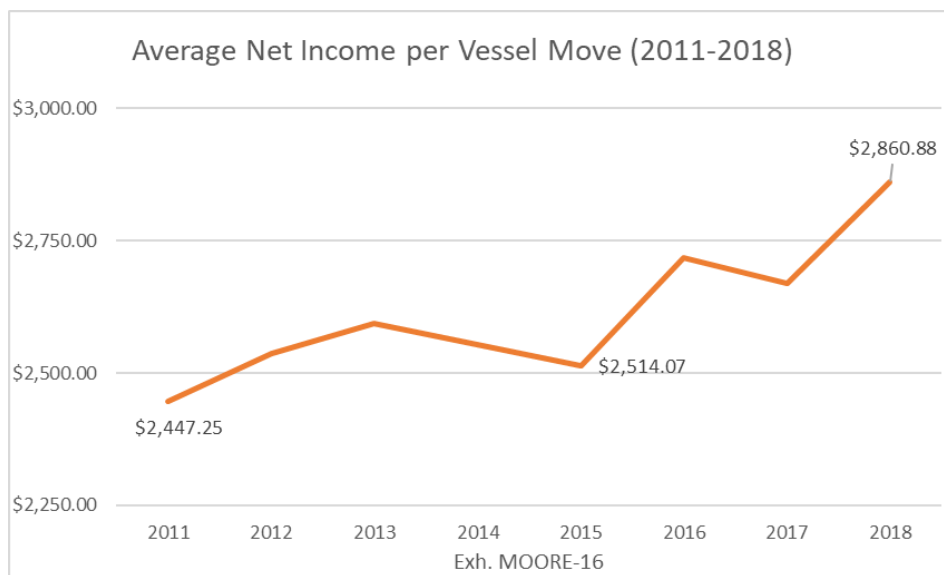
1 data for evaluation of income and vessel moves?

2 A: PMSA is using the latest publicly available PSP Financial disclosure for a full calendar
3 year, which is from 2018 (Exh. JN-04). PMSA asked for disclosure of PSP Financial
4 reports for 2019 but was advised that “[t]he audited financial statement for 2019 has not
5 been finalized.” (PSP Response to PMSA Data Request 219) PMSA is able to use full
6 calendar year 2019 data with respect to pilotage revenues and vessel calls due to
7 availability of reports and spreadsheets from the BPC and provided by PSP.

8 Q: Looking at PSP’s reported Net Income per Vessel Moved historically, have pilot
9 revenues been increasing faster than costs?

10 A: Yes. PSP’s average Net Income per Move has steadily increased over time from
11 \$2,447.25 in 2011 to \$2,860.88 in 2018. [Exh. MM-16]

12 Figure N. Average Net Income per Vessel Move (2011-2018)



23 Q: Do these trends hold true for the recent period under the current tariff where existing
24 rates that have been held constant since 2015?

25 A: Yes. PSP’s Net Income per Move increased from \$2,514.07 in 2015 to \$2,860.88 in
26 2018, an increase of 13.8%, even though the rates were not increased after 2015. [Exh.

1 MM-16]

2 Q: Does growth in Net Income per Move demonstrate that the current tariff covers the
3 average costs of PSP per vessel move?

4 A: Yes, because PSP's Net Income per Move had never been higher than in 2018, there is
5 no question that the current tariff generated more than enough revenue on average to
6 cover the average cost of any growth in PSP's expenses as compared to previous years
7 when the Net Income, naturally post-expense, was lower.

8 Q: How accurate is overall, cumulative PSP Net Income when compared to Average Net
9 Income per Vessel Move?

10 A: Overall PSP Net Income is a crude tool because it hides numerous variables that can lead
11 to misleading conclusions, for instance, the fact that expenses and revenues increase and
12 decrease at different rates due to a variety of factors, including changes in the number of
13 vessel calls and shifts and potential changes in non-essential expenses and benefits which
14 PSP counts in their expenses. For instance, when there are more vessels calling Puget
15 Sound, the pilot boat is in service more, burning more fuel, utilizing more staff, and
16 requiring more dispatch services. This can increase overall PSP expenses, but so long as
17 the growth in vessel revenues also provides additional revenues, then the average
18 additional costs to PSP of these expenses are covered.

19 Q: Are there other ways in which Overall PSP Net Income is potentially misleading?

20 A: We are concerned about the use of Net Income, generally, because it does not account for
21 all the pilot earnings, nor is it normalized for the various changes at the organizational
22 level which occur over time with respect to how PSP books its expenses and internal
23 deferred compensation. So, both of these metrics can yield results that are apples-to-
24 oranges.

25 Q: In order to maintain a comparison of actual pilot operating costs and essential pilot
26 operating costs, are there any categories of actual pilot spending that PMSA would

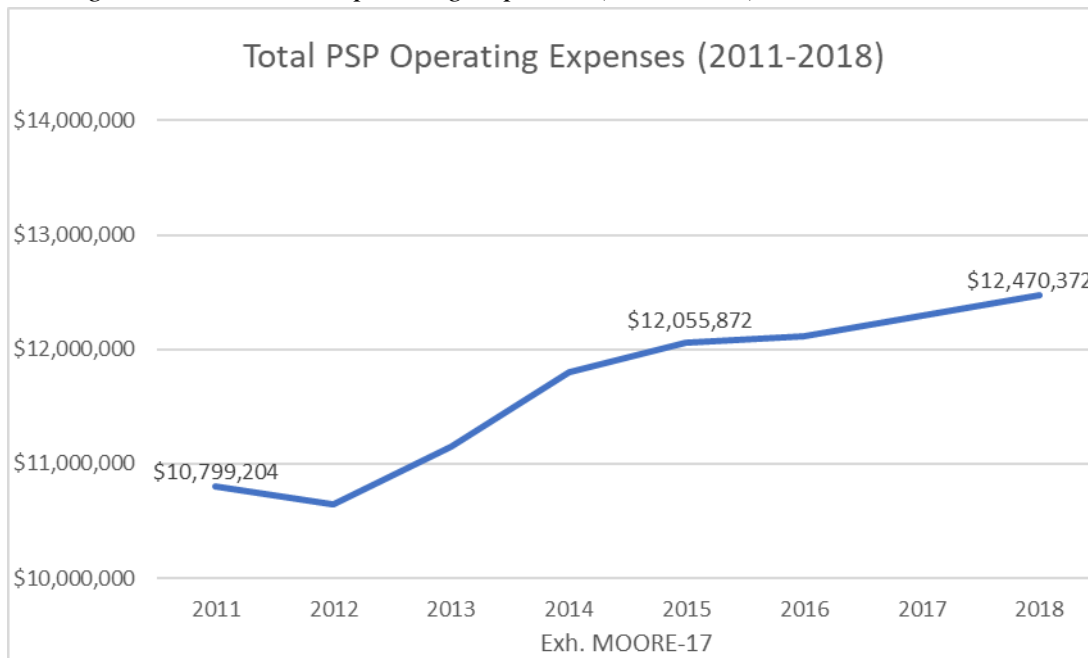
1 exclude for purposes of the comparison?

2 A: Yes. We would exclude all payments to pilots as compensation, both current
3 compensation and deferred compensation, and benefits as an expense. We do not
4 characterize payments made by the pilots as income to themselves, including payouts of
5 current duty time, sick time, vacation time, callback time, individual business expenses,
6 transportation allowances, or deferred retirement, callback, or buy-outs of pilot equity, as
7 pilot operating expenses, since they are all actually forms of pilot compensation. We
8 detail these and other concerns more specifically in Section IX below.

9 Q: Describe how these essential pilot operating expenses, excluding pilot compensation
10 categories, have historically changed over time in the Puget Sound.

11 A: Apples-to-apples annual pilot operating expenses have historically increased relatively
12 very slowly over time. From 2011 to 2018 total pilot costs, including non-essential
13 expenses and pilot benefits and deferred compensation, have increased from \$10,799,204
14 to \$12,470,372. The annual average rate of growth of pilot costs over this time period is
15 2.2% per year. [Exh. MM-17]

16 Figure O. Total PSP Operating Expenses (2011-2018)



1 Q: Do these historical trends hold true for the recent period under the existing rates that have
2 been held constant since 2015?

3 A: Annual pilot operating expenses increased even more slowly under the current tariff,
4 from \$12,055,872 in 2015 to \$12,470,372 in 2018, or approximately 1.1% per year.

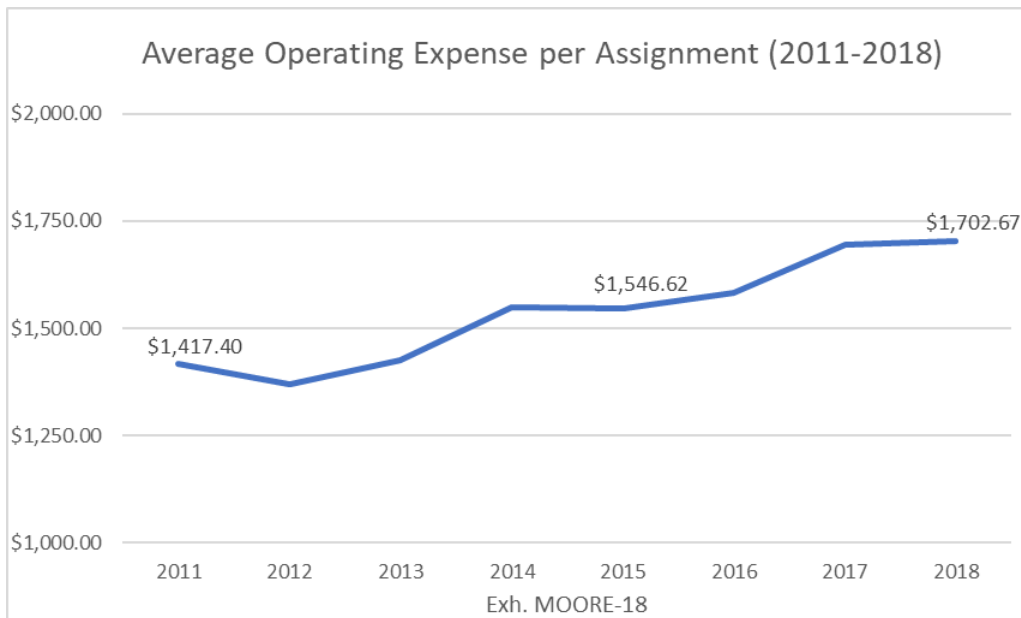
5 Q: Are there any other ways to analyze growth in pilot operating expenses?

6 A: One metric which can describe the amount of PSP overhead necessary to facilitate a unit
7 of pilot work would be to compare Average Revenue Per Assignment versus Average
8 Pilot Operating Expenses Per Assignment.

9 Q: Describe how Average Pilot Operating Expenses Per Assignment have historically
10 changed over time in the Puget Sound.

11 A: Average Pilot Operating Expenses per Assignment have increased from \$1,417 in 2011
12 to \$1,546 in 2015 to \$1,702 in 2019, or approximately 2.9% per year. [Exh. MM-18]

13 Figure P. Average Operating Expense per Assignment (2011-2018)



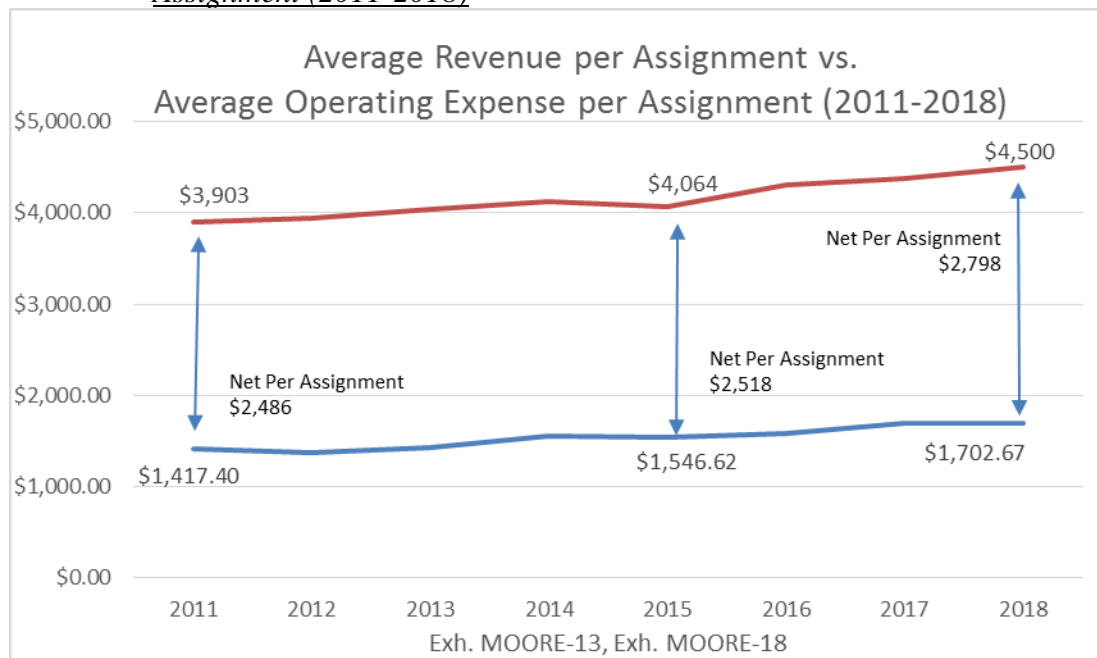
24

25 Q: Describe and compare the rates of growth in Average Pilotage Revenue per Assignment
26 with the rates of growth in Average Pilotage Operating Expenses per Assignment under

1 the current tariff where rates have been held constant since 2015.

2 A: When comparing Average Pilot Revenue per Assignment with Average Pilot Operating
3 Expenses per Assignment under the current tariff where there were no rate increases, the
4 growth in Revenues outpaces the growth in Expenses. In 2015, Average Revenues per
5 Assignment exceeded Average Costs per Assignment by \$2,518 per Assignment, and by
6 2018, the exceedance of Average Revenues over Average Operating Expenses had grown
7 to \$2,798 per Assignment. This means that growth in revenues under the current tariff
8 outpaced growth in pilot operating expenses by 11.1%, or about 3.7% per year. [Exh.
9 MM-13, Exh. MM 18]

10 Figure O. Average Revenue per Assignment vs. Average Operating Expense per
11 Assignment (2011-2018)



22 **IV. TARIFF REVENUES ARE UNRELATED TO THE NUMBER OF PILOTS &**
23 **PILOT ASSIGNMENT RULES**

24 **A. The Relationship Between the Tariff and Number of Licensees, Generally**

25 Q: Does the current tariff reflect a specific number of pilot licensees?

26 A: No. There is no specific relationship between the tariff and the number of pilot licensees.

1 Q: Under the current tariff are there any functions whereby the overall number of pilot
2 licensees are part of a formula paid by vessels?

3 A: No. The current tariff, as adopted at WAC 363-116-300, and as codified at RCW
4 81.116.050, does not vary by the number of authorized licenses or the actual number of
5 pilots licensed. In addition, the tariff does not vary by the number of pilots on duty, on
6 watch, or actually available to pilot each day, or the number of pilots on vacation, or
7 when all the pilots count a watch day on the same day, or the number of pilots on
8 callback, or the number of pilots on comp days.

9 Q: Does the tariff increase under any formula when there are increases to the number of
10 pilot licensees?

11 A: No.

12 Q: Does the tariff decrease under any formula when there are decreases to the number of
13 pilot licensees?

14 A: No.

15 Q: If there is no formulaic relationship between the tariff and the number of pilots working
16 or licensed, how does the tariff generate more revenues for pilots when there are more
17 assignments and vessels needing pilot services?

18 A: Simply stated, when there are more vessel calls and pilots provide more service, overall
19 pilot earnings increase based on larger per vessel revenues and additional vessels
20 demanding pilot service. When there are fewer vessel calls and pilots provide less
21 service, pilots can still increase earnings based on larger per vessel revenues even
22 without additional demand for pilot service.

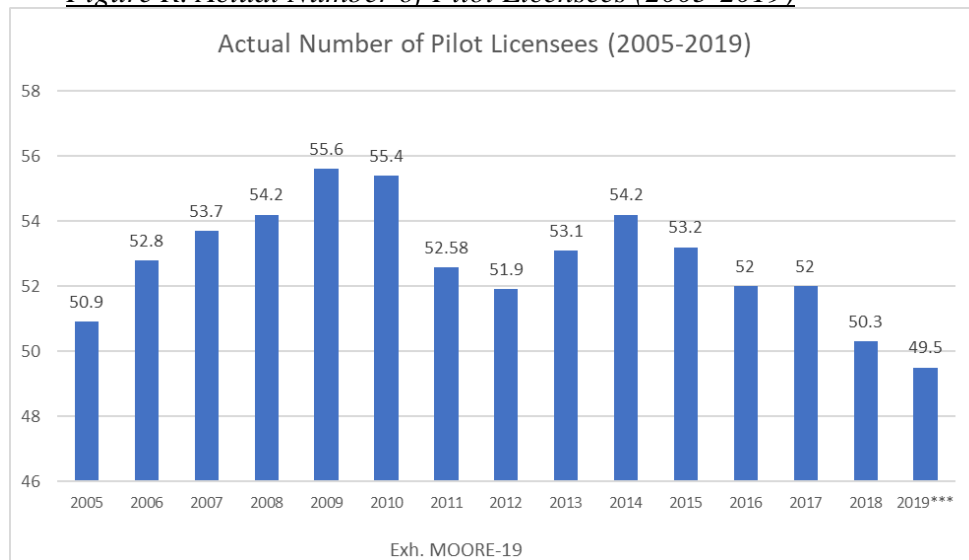
23 **B. Number of Actual Licensed Pilots in the Puget Sound**

24 Q: What has been the number of pilots actually licensed by the BPC from 2005 to 2019?

25 A: The annual number of pilots actually licensed by the BPC from 2005 to 2019 fluctuated
26 from a high of 55.6 in 2015 to a low of 49.5 in 2019. [Exh. MM-19] The average annual

1 number of pilots from 2005 to 2019 is 52.8 pilots per year.

2
3 *Figure R. Actual Number of Pilot Licensees (2005-2019)*



13 Q: How does this compare with the number of pilots actually licensed by the BPC under the
14 current tariff period from 2015 to 2019?

15 A: 2015 to 2019 is a period of low numbers of pilots actually licensed by the BPC when
16 compared to historical averages. 2016, 2017, 2018, and 2019 were all below the historic
17 average of 52.8 pilots licensed per year, and demonstrate a consistent reduction in the
18 size of the pilotage corps from a peak at 53.2 in 2015 to the lowest annual number of
19 pilots of 49.5 in 2019. 2019 is the only year where the annual number of licensed pilots
20 has dipped under 50. [Exh. MM-19]

21 Q: Does the BPC have the authority to limit the number of authorized licenses that it can
22 offer at any one point in time?

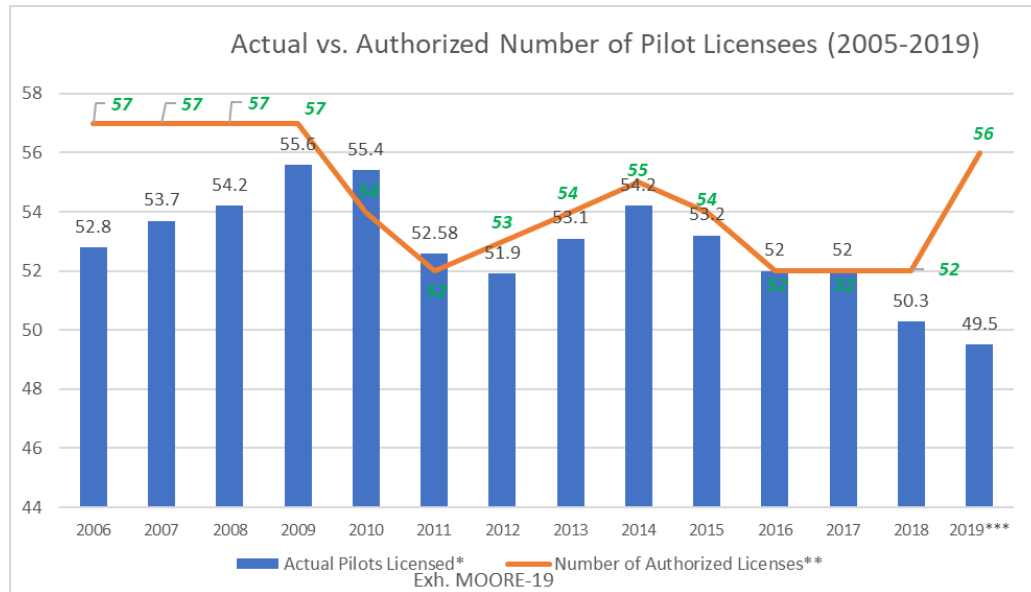
23 A: Yes. RCW 88.16.035(d) and WAC 363-116-065 provide this authority, which BPC has
24 historically utilized to set an upper limit on the number of licenses that it will grant at any
25 one point in time.

26 Q: Does the number of pilots actually licensed by the BPC always reflect the number of

1 authorized licenses that it can offer at any one point in time?

2 A: No, oftentimes there are fewer actual licensees than there are authorized licenses, which
3 is currently the case. [Exh. MM-19]

4 Figure S. Actual vs. Authorized Number of Pilot Licensees (2005-2019)



15 Q: Please provide an example of this scenario at present.

16 A: For example, last July, at the request of PSP to increase the number of authorized
17 licenses in advance of the submission of this Petition, the BPC agreed to increase the
18 number of authorized licenses to 56 from 52. [Exh. JR-17]. However, simply changing
19 an authorization for a future number of licensees does not immediately change the
20 number of working pilots. But, by the end of 2019, there were still only 51 licensed pilots
21 [Exh. JR-09] - not only well below 56, but still below the prior authorized licensed
22 amount of 52.

23 Q: What factors does the BPC consider when changing the number of authorized licenses?

24 A: A number of factors are listed in WAC 363-116-065, including the current economic
25 trends in the industry, fluctuations in the number of calls, the types of assignments, the
26 size of vessels, the cyclical nature of the traffic and whether traffic is increasing or

1 decreasing. The BPC also receives input on the actual average assignment level for a
2 pilot per year compared to the Board-set Target Assignment Level (TAL).

3 Q: Have requests from PSP to change the number of pilots been consistent from year to year
4 with respect to the need to increase or decrease the number of pilots?

5 A: No, the most recent requests by PSP are contradictory and inconsistent with prior
6 requests. Upon comparison, PSP's various requests for changes impacting the current
7 tariff period do not reflect previous methodology, formula, or policy. For example: there
8 were 7,795 assignments in 2015, the same year that PSP requested a decrease of working
9 pilots down to 52 authorized licensees [Exh. JR-18]; but, by comparison, when there
10 were 6,993 assignments in 2019, PSP sought to add the largest number of new pilots
11 ever, up to 63 licensees. [Exh. JR-17]. These positions are wholly inconsistent with one
12 another and belie the lack of a clear policy or theory for setting the number of pilots via
13 recommendations from PSP over the current tariff period.

14 Q: In the most recent actions taken by BPC under the current tariff to authorize an increase
15 in the number of authorized licenses from 52 to 56, did the BPC change the average
16 target assignment level?

17 A: No, the BPC declined to change the target assignment level from 145 despite increasing
18 the number of authorized licenses to 56 from 52 in 2019. [Exh. JR-17]

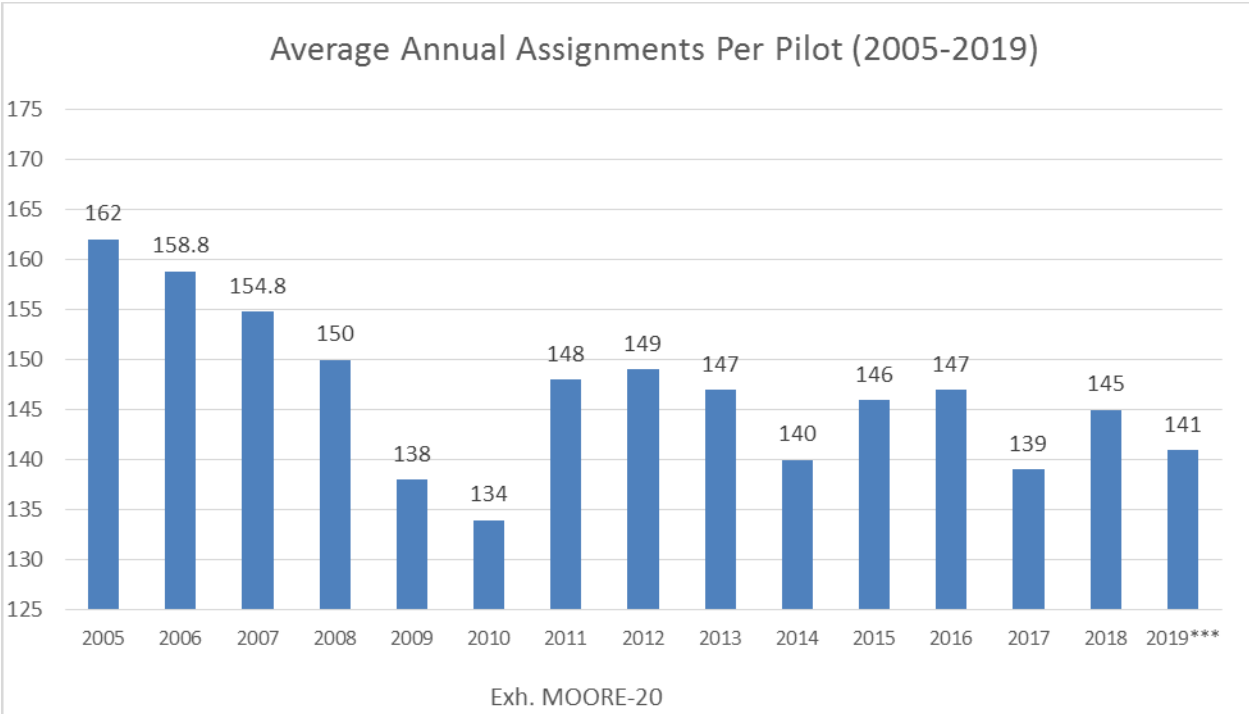
19 **C. Work Completed by Actual Pilot Licensees**

20 Q: What is the relationship of the number of pilots licensed to the number of vessel
21 assignments and work actually performed in the Puget Sound?

22 A: From 2005 to 2019 the actual assignment levels per pilot have ranged from a low of 134
23 in 2010 to a high of 166 in 2005. The average annual actual assignment level per pilot for
24 this period is 146.6. [Exh. MM-20]

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26 Figure T. Average Annual Assignments Per Pilot (2005-2019)

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Q: How does this compare with the annual assignment level per pilot during the current tariff period from 2015 to 2019?

A: 2015 to 2019 is a period that has slightly lower per pilot assignment levels compared to historical averages. The historic average of 146.6 assignments per pilot per year is comparable to the current tariff period average of 143.6 assignments per pilot per year. 2017 and 2019 were notably lower with respect to the number of assignments completed per pilot, with 2019 approximately 5 assignments per year per pilot lower than the historic average. [Exh. MM-20]

Q: How does the annual assignment level per pilot during the current tariff period from 2015 to 2019 compare to the current target assignment level set by the BPC?

A: The current tariff period is very well correlated with the BPC current Target Assignment Level, which continued to be set by the BPC at 145 in July 2019 [Exh. JR-17]. The current tariff period average of 143.6 assignments per pilot per year is slightly below the 145 target. Moreover, the actual assignment average in 2018 was 145 – spot on with the

1 target assignment level.

2 Q: What is the significance of the average number of assignments by pilots being lower in
3 the current tariff than the historic average?

4 A: Pilots in the Puget Sound are, on average, doing significantly less piloting per pilot now
5 than in the period of 2005-2008. Specifically, compared to the productivity peak in 2005,
6 pilots in 2019 performed 21 fewer jobs per pilot, or about 13% fewer, than the average
7 pilot did in 2005. [Exh. MM-20]

8 Q: Does this leave a significant amount of time when pilots are not working?

9 A: Yes, the average annual assignment per pilot was 141 in 2019. Even if one were to
10 presume that every single pilot assignment (including cancellations) was a representation
11 of a full day's work – which it most assuredly is not – this would still leave 224 days of a
12 year when pilots are not providing pilotage services to a vessel.

13 Q: Could one calculate the average bridge hours needed to provide services to a vessel?

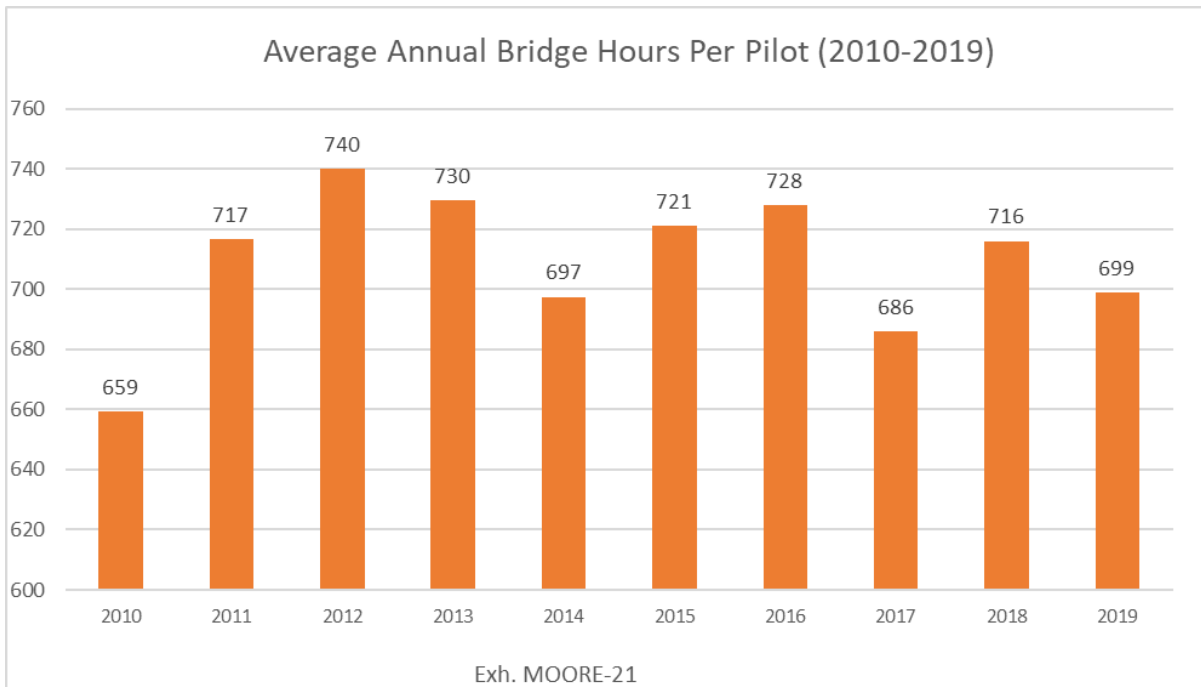
14 A: Yes. Bridge Hours is a subset field of the Revenue Calculations spreadsheet at Exh.
15 WTB-11. After making some adjustments for anomalies in the spreadsheet, total Bridge
16 Hours in the 2018-2019 test period were 34,886.63 hours, and Average Bridge Hours Per
17 Move were 5.03 hours. [Exh. MM-14]

18 Q: Applying the 5.03 hours for Average Bridge Hours Per Move, can you determine the
19 average amount of work done by a pilot across the period of 2010 to 2019?

20 A: Yes, applying the 5.03 hours as an Average Bridge Hour metric to the 2010 to 2019
21 assignment data provides an estimate of the actually piloting work done by a pilot. For
22 those years, total bridge hours worked per pilot per year have ranged from a low of 659
23 in 2010 to a high of 740 in 2005. The average annual bridge hours per pilot for this
24 period is 709. [Exh. MM-21]

25

26 Figure U. Average Annual Bridge Hours Per Pilot (2010-2019)



12

13 Q: What does this bridge hour calculation demonstrate about the amount of time when pilots

14 are not working?

15 A: In 2019, the 699 bridge hours that each pilot worked on average breaks down to 58.25

16 average bridge hours per pilot per month. Since each month has on average 730.5 hours,

17 pilots are, on average, not piloting or providing pilotage services to a vessel for 672.25 of

18 those hours.

19 **D. There Is No Correlation Between the Tariff and Number of Pilots, But as Pilots**

20 **Work Less, They Earn More**

21 Q: What is the relationship between average pilot assignments and revenue per assignment?

22 A: So long as average revenues per assignment are increasing and the average number of

23 pilot assignments is flat or decreasing, pilots are earning more while working less.

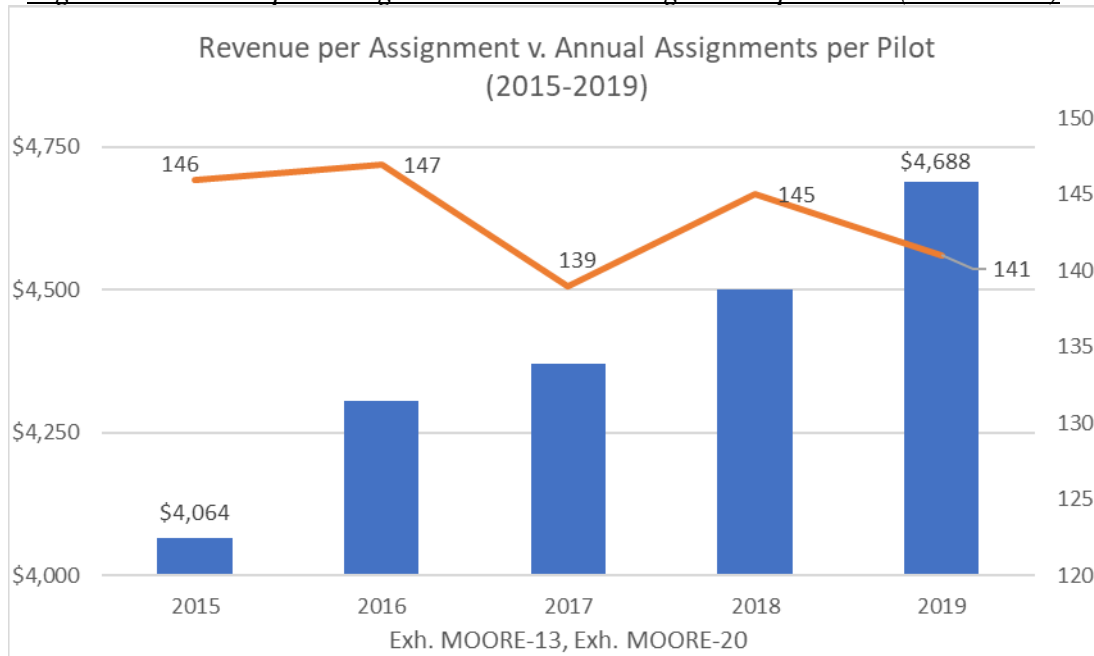
24 During the current tariff period, the average number of assignments by pilots have

25 decreased over time from 146 and 147 in 2015 and 2016 to 141 in 2019. [Exh. MM-20].

26 Over the same time, average revenue per assignment has grown from 2015 at \$4,064 per

1 assignment to \$4,688 in 2019. [Exh. MM-13]. In sum, pilots have seen a slight decrease
2 in their workload of -3.5% during the current tariff period while enjoying increases in
3 their revenues per assignment of +15.4%.

4 Figure V. Revenue per Assignment v. Annual Assignments per Pilot (2015-2019)



16 Q: Is there a correlation between average annual pilot assignments and changes in the tariff?

17 A: No. The tariff establishes a cost of service for a particular ship and a particular transit. It
18 does not adjust with pilot workloads, and the number of average annual pilot assignments
19 is not adjusted by the tariff. There are no formulaic ways in which the number of pilot
20 licensees are related to the cost of service put forward in the tariff. This is borne out in a
21 graphical comparison of these two factors. [Exh. MM-5, Exh. MM-20]

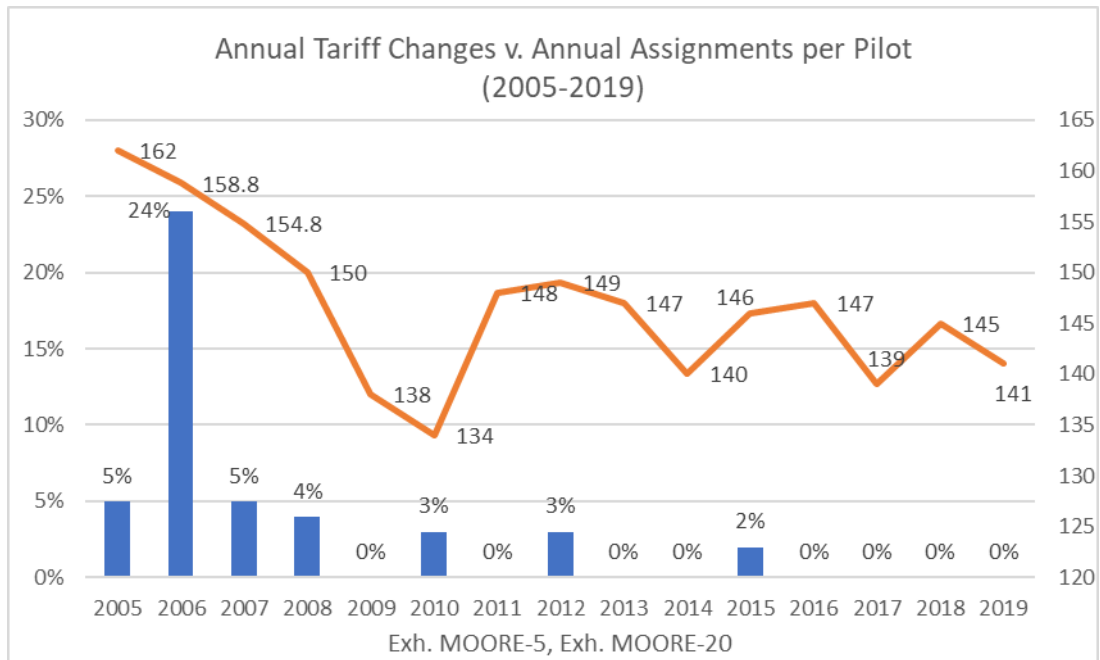
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26 Figure W. Annual Tariff Changes v. Annual Assignments per Pilot (2005-2019)



Q: Describe how tariff change trends and annual assignment per pilot trends compare.

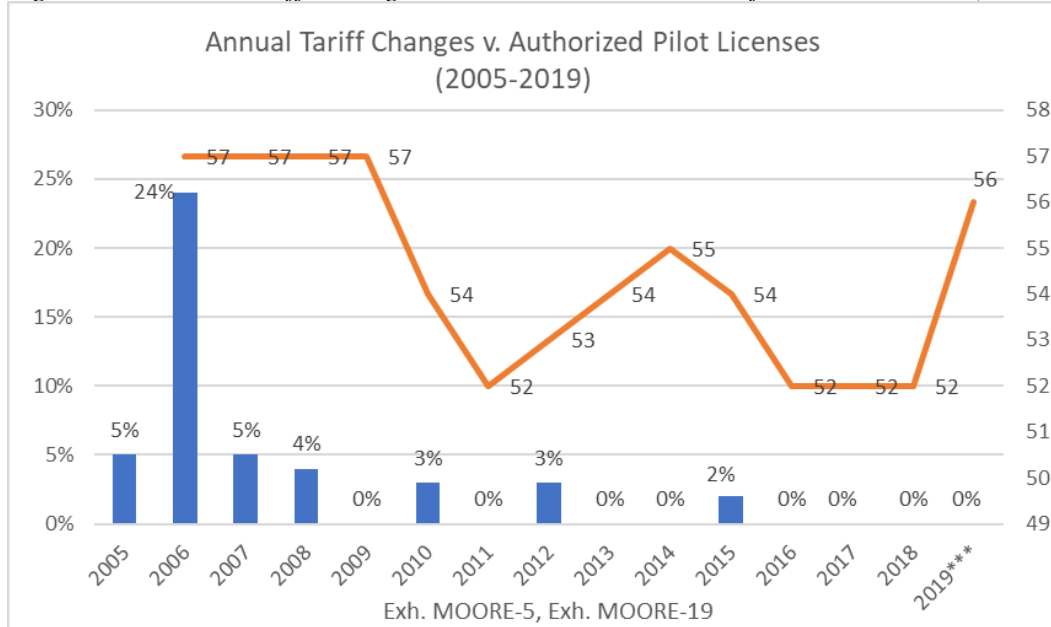
A: The only clear trend which is apparent from the complete historic comparison of these variables is that they are unrelated. When rates are held constant, such as in 2009, 2011, 2013, 2014, 2016, 2017, 2018, and 2019, the assignment levels vary with increases up and decreases down just as frequently. These changes are not the result of changes in the tariff. There was one subset trend of note, that in the period of consistent rate increases on an annual basis, from 2005-2008, every year thereafter, from 2006-2009, saw decreases in the annual assignments per pilot. If this is indeed a corollary trend, then if the goal of a rate adjustment is to improve pilot workload, efficiency, and reduce callback stressors, then one should avoid periods of ongoing rate increases.

Q: Is there any correlation between the overall number of licensed pilots and changes in the tariff?

A: No. A historic review of the number of pilot licensees reinforces the fact that when BPC makes changes to the number of authorized pilot licensees and has made changes to the tariff that these changes were not correlated. Every peak and valley with respect to the

1 number of authorized pilot licenses occurred in a year with a 0% tariff increase: 2009
 2 peak at 57 with a 0% tariff change, 2011 trough at 52 with a 0% tariff change, 2014 peak
 3 at 55 with a 0% tariff change, 2016-2018 tough at 52 with a 0% tariff change, and 2019
 4 with a peak at 56 authorized pilot positions but still with a 0% tariff change. [Exh. MM-
 5 5, Exh. MM-19]

6 *Figure X. Annual Tariff Changes vs. Authorized Number of Pilot Licensees (2005-2019)*



17 **E. Assignment Levels of Individual Pilots Vary Widely Within PSP**

18 Q: Is it possible to see beyond the average assignment level to analyze the actual amounts of
 19 work that individual pilots do?

20 A: Yes, one can analyze the individual workload of each pilot based on the PSP Earned
 21 Revenue Reports required to be provided to the BPC. [Exh. JR-6]

22 Q: Which pilots in 2018 had the highest assignment levels above PSP's average assignment
 23 level that year of 145?

24 A: In 2018, three pilots with the highest number of assignments included individuals with
 25 222, 191, and 183 assignments. [Exh. MM-22]

26 Q: Which pilots had the lowest 2018 assignment levels below the annual target assignment?

1 A: In 2018, the four pilots with the lowest number of assignments, setting aside others that
2 had lower workloads due to injury or retirement, included individuals with 89, 112, 113,
3 and 118 assignments. [Exh. MM-23]

4 Q: Is it fair to say that there is a wide variety of assignment levels of pilots within PSP?

5 A: Yes, the range of assignment levels within PSP in 2018 was between 222 assignments
6 and 89 assignments.

7 Q: Are these wide variations in assignment levels within PSP a normal and regular
8 occurrence?

9 A: Yes, there are many different workloads amongst pilots, both above and below the
10 average assignment level. Because BPC regulates to an average assignment level, the
11 required reporting focuses on average assignment levels, and as PSP pays an average net
12 income a casual observer might presume that all pilots are doing about the same amount
13 of work, but a closer review demonstrates quite a wide variation of workloads.

14 Q: How would you describe the impacts of having significant differences in actual
15 assignment levels amongst pilots and large deviations from the average pilotage
16 assignment level?

17 A: The PSP watch system is inefficient, and this inefficiency results in an outcome which
18 allows most pilots to be flexible and maximize their time not working. As the
19 watchstanding policies prioritize schedule flexibility for pilots, individual pilots can
20 choose to be more productive or less productive with their time and can choose when to
21 participate in callbacks and when not to participate in callbacks.

22 Q: Can or should one presume that licensed pilots with higher assignment levels were or are
23 more likely to be involved in a vessel incident or safety occurrence?

24 A: No. So long as all of these pilots remain licensed and regulated by the State of
25 Washington through the BPC, ratepayers, the UTC, and the public should be able to
26 presume a level of piloting safety, competency, and skill in accordance with their

1 licensing, training, standards of care, state and federal law, and with utmost regard for
2 safety, fatigue, and competency. If there is any deviation from these norms, such
3 deviations would be reported, investigated, and, if necessary, mitigated by regulators
4 including the BPC and Coast Guard as appropriate.

5 Q: Have any identified “high assignment” pilots submitted notice of a violation of rest
6 rules?

7 A: Pilots are required to report fatigue and submit violations of rest rules under RCW
8 88.16.103. To our knowledge, BPC has not received any such reports and no such
9 violation has been reported in the BPC Annual Reports.

10 Q: Do you have any basis to believe that any of the licensed pilots with the highest
11 assignment levels in 2018 were any less safe, skilled, rested, or competent than any other
12 licensed pilots?

13 A: No.

14 Q: Aside from the incident mentioned below, do you have any basis to believe that any of
15 the other licensed pilots with the lowest assignment levels in 2018 were any less safe,
16 skilled, rested, or competent than any other licensed pilots?

17 A: No.

18 Q: Relying on the BPC incident data, is it possible to draw the conclusion that pilots with
19 fewer days off are less safe or more fatigued than other licensed pilots?

20 A: No. To the contrary, in 2018, the BPC Annual Report identified only one incident where
21 a pilot suffered from fatigue: “The assigned pilot fell asleep on the bridge. At no time
22 was the vessel in danger of grounding or collision. The Board issued a reprimand with
23 the requirement for a specific training exercise. The Board also revised the policy for the
24 resumption of duties out of rotation.” That incident did not involve a pilot with higher
25 than average assignments, it involved a pilot with lower than average assignments and, a
26 pilot that was presumably well-rested as he was coming off of a period of non-pilotage.

1 [Exh. JR-6]

2 Q: On the basis of the BPC incident reports, can you draw any conclusions regarding pilot
3 safety on the basis of the number of assignments completed by pilots?

4 A: No, there are no trends implicated by a single data point with respect to the pilot with
5 very few assignments and there are no other incidents which pointed to fatigue as a basis
6 for discipline, whether by pilots with very many assignments or very few assignments.

7 **F. The Tariff Does Not Determine Pilot Workload Decisions or Net Income Per Pilot**

8 Q: Is there any provision of the tariff which requires a specific division of pilot workload or
9 a workload formula to determine average pilot Net Income?

10 A: No.

11 Q: Could pilots choose to divide their Net Income on a pro-rata share or on some other
12 comparable basis which is commensurate with their actual workloads?

13 A: Yes.

14 Q: Theoretically, if pilotage was provided in 2018 at the maximum actual per pilot
15 assignment level of 222 assignments [Exh. MM-22], how many pilots would have been
16 needed to move all of the vessels that called on the Puget Sound that year?

17 A: In 2018, at the actual high per pilot assignment level of 222, only 33 pilot licensees could
18 have completed all of that year's 7,324 assignments. [Exh. MM-12, Exh. MM-22].

19 Q: If PSP had only 33 working licensees in 2018, and all of these pilots shared all of the
20 same PSP-reported Gross Income, Costs, and Net Income in 2018, what would the
21 average net income per pilot have been in 2018?

22 A: In 2018, with the reported "Balance of Pilotage Revenue Pooled" of \$20,245,370 (Exh.
23 JN-04, pg. 22), if PSP had 33 licensees, plus 1 for the non-working PSP President, the
24 Average Net Income per pilot would have been \$595,452. That is equal to 2.9% of the
25 total pooled net revenue of PSP.

26 Q: So, if pilots were paid for work at the maximum assignment level actually logged and

1 done safely in 2018, the current tariff would be capable of providing these pilots with an
2 average net income of \$595,452 per year?

3 A: Yes.

4 Q: If pilotage was provided in 2018 at the lowest per pilot assignment level of 89
5 assignments, how many pilots would be needed to move all of the vessels that called on
6 the Puget Sound in 2018?

7 A: In 2018, at the actual lowest level of 89 assignments per year, 83 pilots would have been
8 required to complete all of that year's 7,324 assignments. [Exh. MM-20, Exh. MM-23].

9 Q: If PSP had 83 working licensees in 2018 who shared all of the same PSP-reported Gross
10 Income, Costs, and Net Income in 2018, what would the average net income per pilot
11 have been in 2018?

12 A: In 2018, with the reported "Balance of Pilotage Revenue Pooled" of \$20,245,370 (Exh.
13 JN-04, pg. 22), if PSP had 83 licensees, plus one for the non-working PSP President, the
14 Average Net Income per pilot would have been \$241,016. That is equal to 1.2% of the
15 total pooled net revenue of PSP.

16 Q: So, if pilots were paid for work at the minimum assignment level which was actually
17 logged by a full-time, non-injured pilot in 2018, the current tariff would be capable of
18 providing these pilots with an average net income of \$241,016 per year?

19 A: Yes.

20 Q: Is it fair to say that under this theoretical methodology of adjusting the number of pilots,
21 the current tariff is capable of producing a range of pilotage average Net Incomes of
22 \$241,016 to \$595,452 in 2018 without any other changes in the rates?

23 A: Yes.

24 Q: Is this range of possible Net Incomes in 2018 consistent with a pro rata share analysis of
25 assignments and Average Net Income Per Pilot?

26 A: Yes, considering Average Net Income per Assignment in 2018 was \$2,796.82 [Exh.

1 MM-24] The pro rata income of the highest producing pilot at this Net Income per
2 Assignment rate is \$620,894. The pro rata income of the lowest producing pilot at this
3 Net Income per Assignment rate is \$248,916. Under this pro rata methodology, the range
4 of revenues capable of being generated by the current tariff is very comparable.

5 Q: Is it fair to say that under this analysis of a pro rata share, the current tariff is capable of
6 producing a range of pilotage average Net Incomes of \$248,916 to \$620,894 in 2018
7 without any other changes in the rates?

8 A: Yes.

9 Q: Are these estimates of pro rata Net Incomes in 2018 consistent with an evaluation of the
10 percentage share of overall revenues earned versus an average?

11 A: Yes, utilizing the PSP Earned Revenue Reports for 2018 [Exh. JR-6], of the highest
12 assignment pilots the largest producing pilot earned gross pilotage revenues of
13 \$1,174,065. Of the lowest assignment pilots, the lowest earned gross pilotage revenues
14 were \$246,332. [Exh. MM-22, Exh. MM-23] Comparing these revenue shares against the
15 total Pilotage Revenue of 2018 of \$33,996,799 (Exh. JN-04), the highest and lowest
16 revenues represent 3.45% and 0.72%, respectively.

17 Q: What is the range of Net Incomes in 2018 which could be estimated by this
18 methodology?

19 A: Applying these percentages to the reported "Balance of Pilotage Revenue Pooled" of
20 \$20,245,370 (Exh. JN-04, pg. 22), the current tariff is capable of producing a range of
21 pilotage average net Incomes of \$145,767 to \$698,465.

22 Q: Using the Pro Rata Share range of possible net incomes described above, please describe
23 the difference in income between the actual Average Net Income distribution and to what
24 extent then the pilot who worked the most assignments in 2019 could have been paid.

25 A: The pilot in 2019 who performed the maximum number of assignments safely earned a
26 PSP-reported Net Income of \$402,219 (Exh. JN-04, pg. 22) instead of the Net Income he

1 could have earned at \$620,894. This represents a difference in income of -\$218,675.

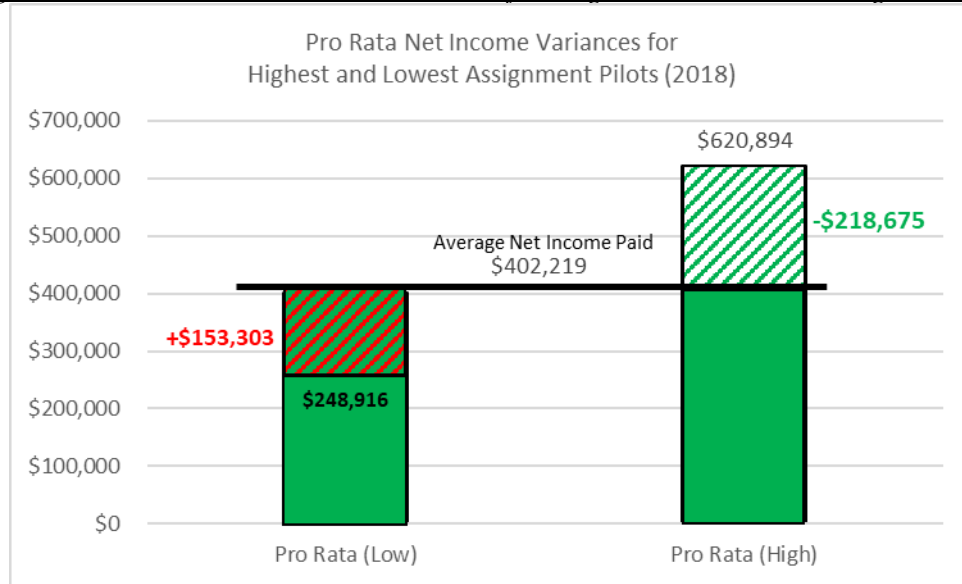
2 Q: Using the Pro Rata range of possible net incomes described above, please describe the
3 difference in income between the actual Average Net Income distribution and to what
4 extent then the pilot who worked the least assignments in 2018 could have been paid.

5 A: The pilot who performed the minimum assignments in 2018 also earned a PSP-reported
6 Net Income of \$402,219 (Exh. JN-04, pg. 22) instead of the Net Income he could have
7 earned at \$248,916. This represents a difference in income of +\$153,303.

8 Q: What is the difference in the range of these pro rata net income variances?

9 A: The difference in the range of potential incomes from the \$248,916 to \$620,894 possible
10 under the current tariff, if pilots had chosen a pro rata net income model, is \$371,978.

11 Figure Y. Pro Rata Net Income Variances for Highest and Lowest Assignment Pilots



22 Q: Why are pilots paid the same relative to each other for the same amount of work?

23 A: The reason why pilots are paid the same relative to each other is because PSP by-laws
24 require that all revenues and all expenses be pooled and then earnings are distributed on
25 the basis of a specific formula to PSP members. PSP members have decided amongst
26 themselves that they would prefer not to be paid on the basis of the work actually

1 performed by each individual pilot but by collective redistribution of revenue per this
2 formula, which is described as based on “days of service.” As a practical matter, what
3 this meant in 2018 was that nearly everyone in PSP was paid the average Net Income of
4 \$402,219 based on 365 “days of service” but completely independent of any actual work
5 that was completed. (Exh. JN-04, pp. 22-26)

6 Q: What is the difference between a “day of service” and when a pilot is earning a “duty
7 day”?

8 A: The terms are used interchangeably in the PSP Audited Financials. For example, a “day
9 of service” is defined as “the total number of days the pilot was an active pilot on pilot
10 roster.” Financials. JN-04, pg 26, (A)(a). In 2018, the “Schedule of Days of Service and
11 Distribution of Pilotage Revenue and Expense” demonstrated a total of 18,372 “Days of
12 Service” with nearly every pilot (all pilots other than those which retired or starting to
13 pilot in 2018) being credited with 365 days of service Financials. JN-04, page 22 and pp.
14 23-25, column (1). In the summary of the financials, the 18,372 “Days of Service” are
15 described as “Total annual duty days” in a section named “FEATURES OF
16 INDIVIDUAL DISTRIBUTIONS” and the determination of the size of the working pilot
17 roster is described as “duty days divided by days in year, rounded to nearest tenth.”
18 Financials. JN-04, pg 262 (A)(1)-(2)1. In short, according to PSP’s Audited Financials,
19 every day that a pilot is on the PSP roster, that pilot is “on duty” – and at 365 days of
20 service credited every year, every pilot is always “on duty.”

21 Q: When a pilot is on a “duty day” does that mean that a pilot is working an assignment,
22 moving ships, and generating revenue under the tariff?

23 A: No. Standing by in the region and waiting to be called to work is what PSP categorizes as
24 a pilot “duty day” and, as noted above, a pilot “duty day” can also just be a day that a
25 pilot was active and on the roster. A “duty day” includes days “on watch” but performing
26 no service and days where pilots are doing nothing more than being listed on the PSP

1 roster, neither of which is the same as actually performing piloting duties on board a
2 ship.

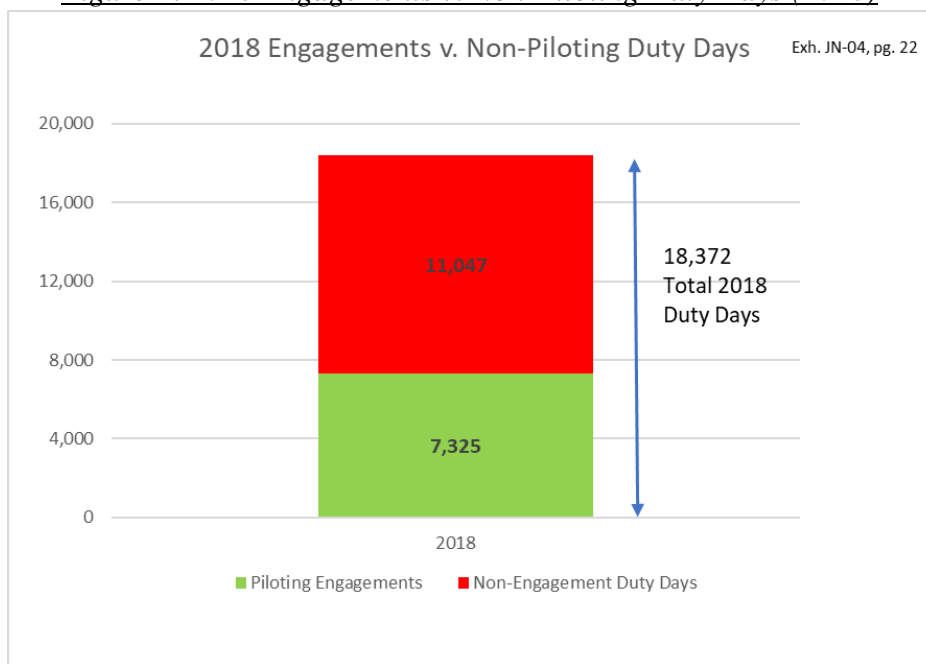
3 Q: With respect to the tariff, is there any revenue associated with a pilot standing “duty” if
4 the pilot is not providing a service to a vessel?

5 A: No. The tariff is a schedule of payments to be made by vessels to pilots for services
6 provided, so when pilots are not working, even if standing “duty,” that pilot is not
7 earning revenues under the tariff.

8 Q: Can you show where PSP has acknowledged actual working engagements under the
9 tariff and compared pilots’ actual working assignments with their “duty days”?

10 A: Yes, in the PSP Audited Financials, PSP compares “Total annual duty days” to overall
11 “Piloting engagements.” For example, in 2018, while there were pilots on “duty” for
12 18,372 days that year, pilots only performed 7,325 “Piloting engagements.” PSP
13 Financials, JN-04, pg. 22, (A)(1)-(3). Assuming each pilot engagement was equal to one
14 day of service per pilot, in 2018 there were 11,047 days of pilots who were on “duty” but
15 not working, which means that pilots were not working on 60.13% of their “duty” days.

16 Figure Z. 2018 Engagements v. Non-Piloting Duty Days (2018)



1 **G. The Current Tariff Properly Does Not Reflect PSP's Internal Workload and**
2 **Assignment Decisions**

3 Q: Is there any requirement in the current tariff that the revenues generated by the tariff be
4 pooled and shared amongst PSP members?

5 A: No, there are no provisions in the tariff which address the distribution of revenue or how
6 the members of a private pilot organization might decide amongst themselves how to
7 divide up the revenues generated by the tariff.

8 Q: Does the current tariff set a pilot assignment level?

9 A: No.

10 Q: Does the current tariff set a pilot average net income level?

11 A: No.

12 Q: Does the current tariff set a minimum or maximum pilot assignment level?

13 A: No.

14 Q: Does the current tariff require pilots to split net income amongst themselves regardless of
15 assignments actually completed by any individual pilot?

16 A: No.

17 Q: Does the current tariff control how and when PSP divides up revenues generated by
18 pilots pursuant to PSP by-laws?

19 A: No.

20 Q: Does PMSA believe that PSP as a private entity should be able to choose to share
21 resources and revenues amongst its members as it sees fit, independent of the tariff?

22 A: Generally, yes, so long as the tariff is set lawfully, PSP is transparent with the public and
23 ratepayers, and pilots are following all state and federal laws. If those requirements are
24 met, then PMSA concurs that pilots may decide amongst themselves privately how to
25 pool and distribute their revenues and expenses so long as they do not create
26 inefficiencies that undermine service and increase cost.

1 Q: Why do you believe that PSP's internal decisions should be respected in the UTC
2 process?

3 A: So long as the tariff is fair, just, reasonable, and sufficient, then under the current system
4 the costs to vessels will remain the same regardless of how pilots choose to subsequently
5 pool and divide their revenues and expenses amongst each other. If these matters are
6 truly kept private, and PSP does not attempt to make its internal decisions about revenue
7 sharing a basis for a rate increase (or for a service disruption), it should matter little to the
8 state or to ratepayers how pilots choose to keep their earnings in the year they are earned,
9 including a decision to enter into a collective deferred compensation agreement amongst
10 themselves to pay out earnings subsequent to billing in a future year.

11 Q: Does PMSA believe that PSP's choice to share resources and revenues amongst itself as
12 it sees fit independent of the tariff should directly impact tariff setting?

13 A: Generally, no. PSP can specifically choose amongst its membership to make inefficient
14 decisions under its own by-laws. This was illustrated in Subsection F above, whereby the
15 highest assignment pilot surrendered an estimated \$218,675 pro rata in 2018, while the
16 lowest assignment pilot benefitted by an estimated \$153,303 pro rata in 2018, purely of
17 their own accord. While tariff rates are presumptively set for efficient operations, if the
18 pilots privately insist on setting up inefficient incentives for pilots, that inefficiency
19 should not be used as a justification to adjust rates.

20 Q: Do the BPC and UTC have an obligation to prevent inefficiency in the tariff itself?

21 A: Yes. The Board has duties to ensure efficiency in the pilotage system and in setting the
22 number of pilots under the Pilotage Act. RCW 88.16.035. Likewise, the UTC must set
23 rates for the efficient delivery of a regulated service and should not set rates supporting
24 inefficiency. If PSP subsequently chooses to act privately in an inefficient manner, PSP
25 should not then turn around and claim that the current tariff is unfair or unreasonable
26 based on its own decisions on how to allocate workload and subsequently divide moneys

1 generated by the tariff.

2 Q: Is it PMSA's position that the current average net income is primarily a construction of
3 PSP's internal by-laws, and it is not a measure of either an adequate or an inadequate
4 tariff?

5 A: Yes, under the current tariff revenues are not a function of the number of pilot licensees
6 nor is the number of pilot licensees related to the revenues generated by the tariff. The
7 tariff generates revenues from vessels per pilotage task performed and does not generate
8 revenues based on a number of pilots expecting to share the revenues from vessel tasks
9 performed. There are many ways in which PSP and individual pilots certainly might be
10 interested in the relationship between the number of pilots and the tariff, but those issues
11 are related to their own internal determinations of how to divvy up pilotage revenues
12 amongst themselves subsequent to it being earned under the current tariff. The real
13 question in our view is whether the tariff is fair and sufficient to provide the service.

14 Q: Is this true for the proposed PSP tariff that is the subject of this Petition?

15 A: Yes, under the proposed tariff revenues remain independent of the number of pilot
16 licensees still, and despite the arguments made to justify an increased tariff on the
17 number of pilots, PSP is under no obligation to sustain such a number of pilot licensees.

18 Q: Does PMSA view PSP management of watch standing, vacation, comp days, meetings,
19 and assignment dispatch to be efficient?

20 A: No. We believe that with a more efficient dispatch and watch standing system PSP has
21 more than enough pilots with more than enough days of the year where they are not
22 piloting to safely provide pilotage services while minimizing callback days and
23 eliminating delays. Given this, it seems that the recent requests for more pilots at the
24 BPC and in this petition for increasing overall tariff charges are based less on a need for
25 additional pilots to complete assignments and more on a desire to secure higher pay for
26 less work without instituting improvements to PSP's watch and callback systems to

1 better match rested pilots to demand.

2 Q: Do you believe it would be appropriate for PSP’s internal decisions on how to share
3 revenues to dictate a finding of whether or not a tariff is fair and reasonable?

4 A: No, absolutely not. If PSP wanted its pilots who worked more to get paid more, it could
5 guarantee that outcome immediately under the current tariff by simply amending its by-
6 laws to pay pilots on a pro rata share for their actual work performed. If they had done so
7 in 2018 the current tariff was capable of delivering pilot earnings pro rata to the hardest
8 working pilot of up to \$620,894. Of course, that would also mean that other pilots who
9 actually worked less than the average pilot would also earn less. This outcome is
10 antithetical to what PSP is asking for in this Petition: a guaranteed increase in average net
11 income while asking pilots to handle fewer vessels – more pay for less work.

12 **V. CALLBACKS ARE NOT A FUNCTION OF THE TARIFF; PILOTS ARE PAID AT**
13 **THE TIME SERVICE IS RENDERED, AND NO EXTERNAL CALLBACK**
14 **“LIABILITY” EXISTS**

15 **A. Callbacks Exist Independent of Tariff Rate Changes, Number of Pilots, and Pilot**
16 **Net Income**

17 Q: Are “callbacks” one of the ways in which PSP members decide amongst themselves how
18 to divide up assignments and the revenues from vessel assignments?

19 A: Yes, callbacks are a regular component of PSP’s management of its internal assignment
20 policies. Callbacks are a function of the PSP By-laws that they have decided to account
21 for callbacks in a manner which impacts how they share revenues.

22 Q: What is a “callback”?

23 A: When PSP establishes its watchkeeping rotation it designates some pilots as on-watch
24 and other pilots as off-watch. A callback occurs when a pilot who is off-watch agrees to
25 take an assignment to move a vessel.

26 Q: Is being “on-watch” the same as being on “duty”?

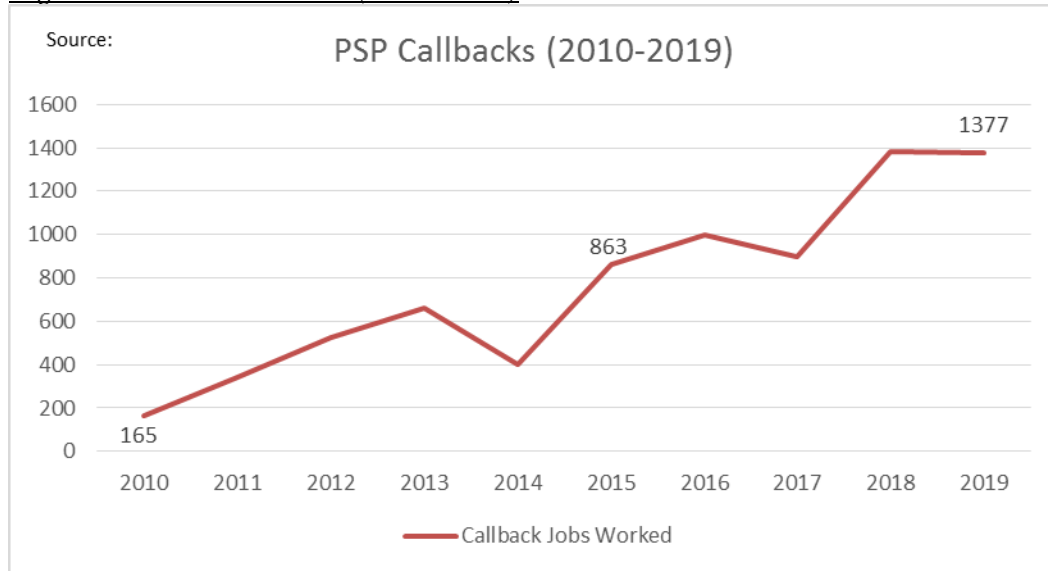
A: No. Under the PSP by-laws keeping watch is an internal assignment and scheduling

1 function, while being on duty is a payment and income distribution function.

2 Q: Please describe how callbacks have increased or decreased over time.

3 A: Pilot callbacks have changed over time and dramatically increased in the past decade
4 from 165 in 2010 to 1,377 in 2019. (PSP Reply to UTC DR 74)

5 *Figure AA. PSP Callbacks (2010-2019)*



15 Q: Describe how callbacks are growing as a percentage of annual assignments.

16 A: Pilot callbacks represented only 2.2% of total annual assignments per year in 2010, but
17 this has rapidly ballooned to a high of callbacks representing 19.7% of total annual
18 assignments in 2019. [PSP Reply to UTC DR74, Exh. MM-12]

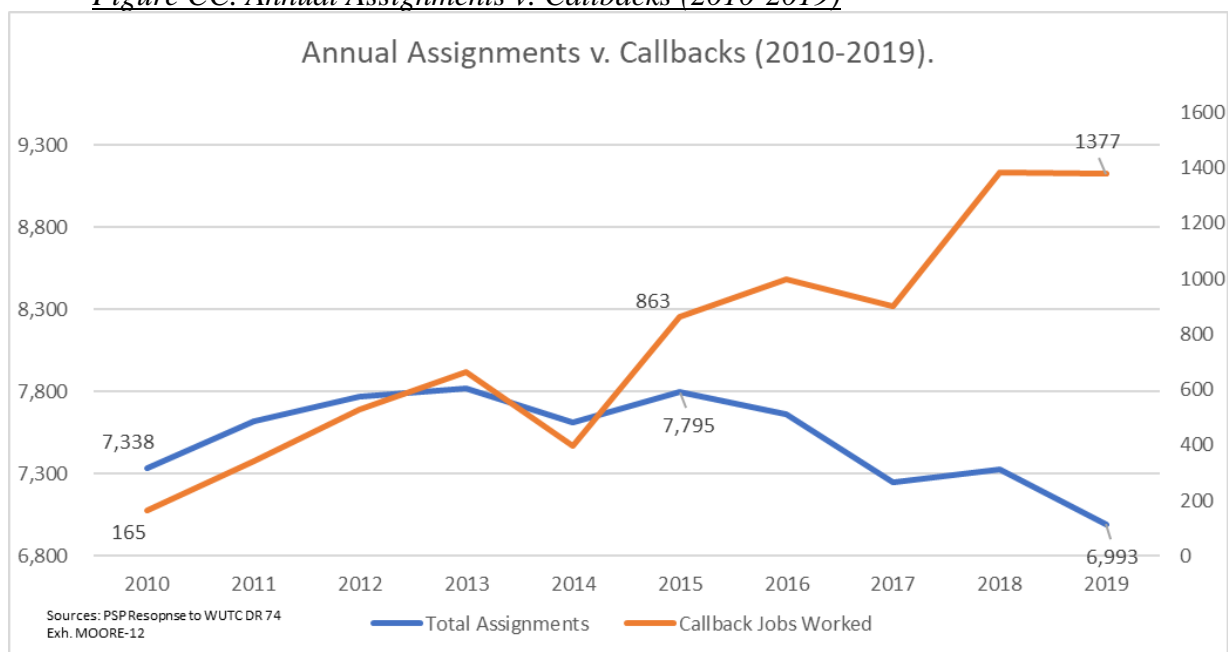
19 *Figure BB. Callbacks as a Percentage of Assignments (2010-2019)*

Year	Total Assignments	Total Callbacks	Callbacks as % of Assignments
2010	7,338	165	2.2%
2011	7,619	341	4.5%
2012	7,769	527	6.8%
2013	7,819	664	8.5%
2014	7,616	398	5.2%
2015	7,795	863	11.1%
2016	7,661	998	13.0%
2017	7,249	899	12.4%
2018	7,324	1384	18.9%
2019	6,993	1377	19.7%

1 Q: Under the current tariff have pilotage callbacks changed even when rates have not been
2 changed?

3 A: Yes, while the rates in the current tariff have not been increased since July 1, 2015, pilot
4 callbacks have increased, even while assignments have dropped. In fact, callback growth
5 was clearly positively correlated with growth in vessel assignments from 2010-2015, but
6 from 2015-2019 callback growth has become negatively correlated with vessel
7 assignments.

8 *Figure CC. Annual Assignments v. Callbacks (2010-2019)*

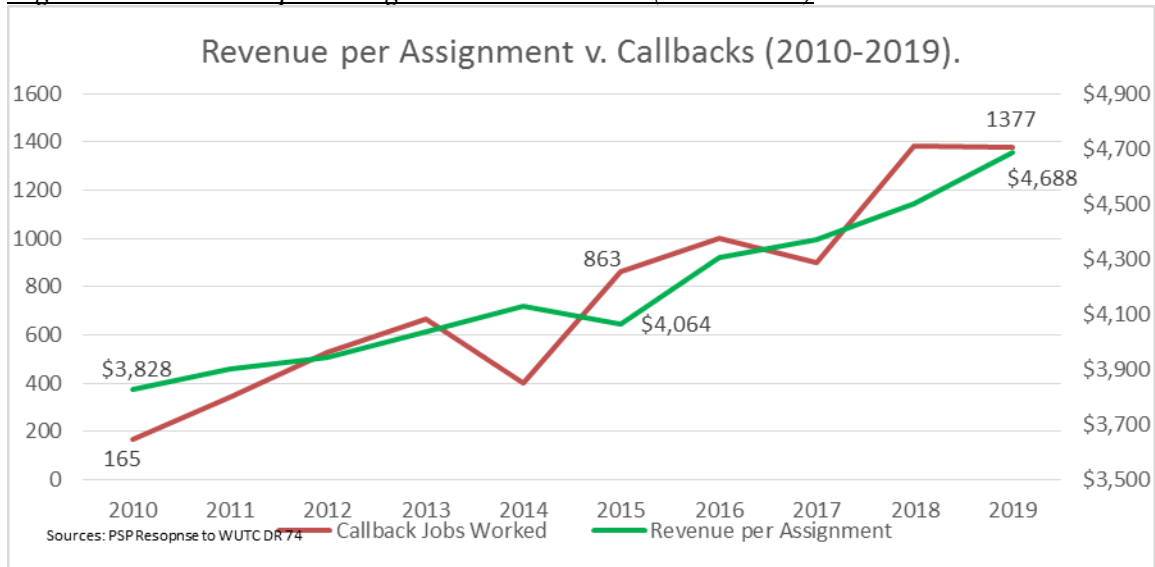


19 Q: Is the growth in callbacks from 2010-2019 correlated with Average Revenue per
20 Assignment?

21 A: Yes. Average Revenue per Assignment and Callback growth are very clearly correlated.
22 [PSP Reply to UTC DR74, Exh. MM-16]

23
24
25
26

1 Figure DD. Revenue per Assignment v. Callbacks (2010-2019)



11 Q: How would you explain a strong correlation between Revenue per Assignment and
12 growth in callbacks?

13 A: Under the PSP By-laws pilots get paid under a revenue pooling agreement, so every pilot
14 gets paid a portion of the net revenues earned for every vessel moved. This occurs
15 independent of their own individual workload - even if they refuse a callback. As the rate
16 of pay per assignment increases, underperforming pilots are paid more regardless of their
17 actual assignment level or of that individual pilot's contribution to PSP revenue
18 generation. For a pilot disinclined to work an off-watch job, the higher the revenue per
19 assignment payment climbs the stronger the disincentive to take a callback.

20 Q: What could PSP do to interrupt this incentive to avoid a callback?

21 A: Strong watch scheduling, dispatch rules, and management aimed at increasing
22 underperforming pilot workloads are all necessary to counter the disincentive to work.
23 Until that occurs, underperforming pilots will have no incentive to accept more call back
24 assignments or to maximize their availability to pilot while on watch.

25 Q: What does this correlation say about the premise underlying the PSP Proposal that
26 increases in tariff are necessary to solve their callback "liability" problem?

A: That is exactly the wrong thing to do at this time. If the growth of callbacks is strongly

1 correlated with growth in average revenue per assignment, then throwing more ratepayer
2 money at what is very obviously an inefficiency and a management problem will likely
3 be counterproductive and is likely to make the problem more acute.

4 **B. All Services by Pilots Are Paid by Vessels at the Time Services Are Provided Under**
5 **the Tariff and Therefore No Callback Liabilities Accrue to Vessels**

6 Q: Please describe how vessels pay for pilotage services provided regardless of PSP's
7 internal pilot assignment policies or agreements.

8 A: When a vessel calls on a port in the Puget Sound, it receives an invoice and pays the
9 current tariff for the pilotage services rendered. A vessel pays the tariff-approved rates no
10 matter whether the pilot was on an A watch or B watch, or on a regular assignment or a
11 callback assignment, or whether the pilot only performed 89 vessel assignments per year
12 or whether the pilot performed 222 vessel assignments per year. As far as the vessel is
13 concerned, the service has been delivered and the tariff charge for that service has been
14 paid.

15 Q: If the service has been provided and the current tariff rate has been paid for that service is
16 there any other future "liability" associated with the provision of that service?

17 A: No. If PSP has received payment for a pilotage service provided pursuant to the tariff,
18 then any effort to collect any revenues other than those imposed exclusively by the tariff
19 would be unlawful. RCW 88.16.120.

20 Q: If the collection of additional revenues for a service which has already been provided and
21 payment received would be unlawful, is it true that any comp day "liability" that exists
22 would exist only on PSP's own books?

23 A: Yes. To do otherwise, and to increase the tariff to pay for this "liability," would result in
24 PSP being paid twice for the same service: first by the vessel that actually hired the pilot
25 at the time the service was provided, and second by all of the vessels subject to a new
26 and higher rate at a future time under a future tariff for many future years to come.

1 Q: What is an indicator that PSP acknowledges that it manages comp day “liability”
2 internally and independent of the tariff?

3 A: One indicator of this is the acknowledgement that the level of the “liability” is
4 exclusively within the control of PSP and can be eliminated through their own
5 scheduling practices. For instance, “because a significant percentage of Callback Days
6 earned by pilots are used to take a day off during their career, those days never required
7 additional funding in the tariff.” (Exh. WT-1T)

8 Q: Do you agree with this statement?

9 A: Yes, when PSP pilots choose amongst themselves to trade their days in order to perform
10 callbacks there is no “liability” here and thus no tariff issue. They are choosing how they
11 distribute their earnings distributions internally, and those decisions do not “require” any
12 additional consideration in tariff setting decisions.

13 Q: Independent of the question as to whether or not the callback system is efficient or a
14 good operating model or not, what is the relationship of this type of assignment to the
15 current tariff?

16 A: There is no relationship between the tariff and callbacks because the tariff is not variable
17 based on the number of total assignments by pilots or individual assignments by pilot.
18 Callbacks can be a way to address inefficient matching of pilots to demand and to
19 address reasonably unforeseen pilot demand, but these assignment specifics occur
20 independent of the tariff.

21 Q: Does the current tariff account for variables in pilot assignments or for the existence of a
22 callback?

23 A: No. The tariff generates revenues from vessels per task performed, and how PSP has
24 decided amongst itself to share tariff revenues subsequent to the performance of that task
25 and the payment by the vessel is not a variable in the tariff.

26 Q: Does the proposed PSP tariff account for variables in pilot assignments or callbacks?

1 A: No.

2 Q: Should the tariff charge a different rate for the same service based on the internal revenue
3 distribution agreements amongst the pilots of PSP?

4 A: No.

5 **C. Callback Generated “Comp Days” Represent an Internal Agreement on Deferred**
6 **Compensation**

7 Q: Can pilots choose to share all proceeds from piloting equally and by pooling all vessel
8 revenues on one hand but then create individual debits for some pilots based on a concept
9 of actual work completed on the other hand?

10 A: It is a situation which defies logic and is wholly internally inconsistent, but as noted
11 above in Section IV. F., PSP has the discretion to make internal decisions that are
12 inefficient, and pilots can agree to transfer payments relative to each other by private
13 agreement.

14 Q: Why does PSP maintain this internal accounting if it yields illogical results?

15 A: We do not presume to know how or why this seems logical for PSP or why they persist
16 with this very expensive system of deferred compensation. We respect that these are
17 PSP’s internal decisions. But, on behalf of the ratepayers, we do not agree with the
18 generation of large number of banked “comp days” under these agreements being used to
19 put pressure on the tariff. PMSA believes that it is entirely inappropriate to apply these
20 inherently inefficient and unsustainable internal revenue sharing positions or deferred
21 compensation agreements to the tariff. It is our recommendation that the UTC institute a
22 study of efficiency in order to help restructure the tariff so it creates natural incentives for
23 efficiency, and internal maximization of available pilot talent and internal minimization
24 of costs, and counters the inefficiency which can become endemic for businesses not
25 made subject to competition in a marketplace.

26 Q: Have you reviewed the testimony of Capt. Ivan Carlson at Exh. IC-1T-8-13 and the

1 testimony of Walt Tabler at Exh. WT-1T-17-25?

2 A: Yes.

3 Q: What are your general reactions to this testimony with respect to callbacks?

4 A: PMSA generally disputes the characterizations of industry's positions with respect to
5 callbacks and denies the claims that pilots perform work or have been performing work
6 under the Pilotage Act without compensation or otherwise at their own expense, that the
7 callback system is tied to an increased provision of service not otherwise required of the
8 pilotage monopoly in a compulsory state pilotage system, and that the callback system is
9 an effective form of fatigue management. A pilot that is healthy and licensed and
10 completes 127 assignments per year but then refuses a callback is obviously
11 underperforming. Any pilot who refuses to carry a full, fair share of the workload should
12 not be empowered to make a decision to not work and still be paid for a duty day as if
13 they had worked. PSP should address those who feel an entitlement to not work,
14 establish an effective management structure that ensures a responsible distribution of
15 work, or create incentives to have rested pilots available. Obviously, PSP should be able
16 to manage a watch schedule where a pilot will actually be able to provide vessel services
17 for 145 days out of 365.

18 Q: Do you believe from this testimony that the PSP Petition is asking for rate increases to
19 cover future "funding for the workload we perform despite our acute understaffing" as
20 well as to reimburse PSP for "all Callback Days that accrued prior to implementation of
21 revised rates" going back to 2005 (IC-1T-13)?

22 A: Yes, that is my understanding.

23 Q: What is PMSA's response to the request for future "funding for workload"?

24 A: We completely oppose this effort to require ratepayers to pay twice for a service
25 previously provided. The tariff does not fund specific pilot workloads. PSP determines
26 its own workloads amongst itself, and those workloads vary widely by pilot. Whether

1 PSP agrees with the number of pilot licenses which are granted by the State of
2 Washington or not, so long as there are no violations of the fatigue or rest rule limitations
3 on the pilots' collective ability to provide services to vessels, pilots are compelled to
4 provide such service. The provision of the compulsory pilotage service remains
5 regardless of whether they agree with the rate set by the tariff, whether they like what
6 they are paid individually by agreement with their fellow pilots, whether they agree with
7 the target assignment levels set by the BPC, or whether they agree with the position of
8 ratepayer representatives in 2005 or 2020. These considerations, including the rates set in
9 the tariff, are irrelevant to internal pilot decisions about sharing workload.

10 Q: What is PMSA's response to the request for reimbursement to "fund all Callback Days"
11 since 2005?

12 A: PMSA vehemently objects to the idea that vessels should pay twice for the same service.
13 Once at the time of service and then again through a higher future rate for a deferred
14 compensation not accounted for at the time of service. Or, worse still, to pay a higher
15 tariff in order to pay for the potential for additional pilots to address PSP-created
16 inefficiencies in their own assignment and dispatch policies.

17 **D. Changes to the Tariff Do Not Change Delays, Callbacks, Pilot Productivity, the**
18 **Number of Pilots On-Watch, Pilot Assignments, or Create Marginal Benefits for**
19 **Vessels**

19 Q: Do you agree with the testimony of Capt. Carlson that PSP is "obligated to provide
20 efficient and timely service, meaning we move ships on time and without delays if at all
21 possible," and that a component of PSP's obligation to provide a service requires that
22 PSP "call pilots to perform callback jobs" when needed. (Exh. IC-1T-7)?

23 A: Yes, we agree that state licensed pilots have acted collectively to form PSP as a
24 monopoly responsible for providing compulsory state services and that it is therefore
25 obligated to provide services under the tariff. We further agree that in the event that their
26 regular watch system proves inadequate to provide the services that they are obligated to

1 provide that they need to adjust their watchkeeping in order to provide adequate
2 availability of those on watch and off watch.

3 Q: Capt. Carlson identifies that pilot shortages and callbacks which cause delays are “first
4 ... the result of setting the number of pilots at too low a level” and “second ... the
5 confluence of factors, including a greater mandatory rest period that was needed to
6 address fatigue, a maximum 13-hour time limit on working multiple consecutive harbor
7 shifts, trainees who were unable to complete the training program, and pilots who
8 became medically unfit for duty and were unable to move ships.” (Exh. IC-1T-7-8).
9 Setting aside whether you agree or disagree with Capt. Carlson on these specific factors
10 of delay, do you agree with Capt. Carlson’s exclusion of tariff rates from the list of
11 factors which cause pilot shortages and vessel delays?

12 A: Yes, I agree with Capt. Carlson’s exclusion of the tariff and pilotage rates from the list of
13 factors which cause callbacks, delays, and pilot shortages. Adjusting the current tariff
14 will not change callbacks, delays, or pilot shortages.

15 Q: Further regarding the subject of “PSP reliance on callbacks,” Capt. Carlson concludes
16 that “[i]f we were properly staffed, callbacks would only occur a small percentage of
17 days in the year. Instead, it seems like our dispatchers are having to beg pilots to take
18 jobs on their respite in order to avoid or limit delays.” (Exh. IC-1T-8). Do you agree with
19 Capt. Carlson’s assessment that callbacks would be reduced with a proper management
20 of its staffing, so PSP need not “beg pilots to take jobs”?

21 A: Yes, absolutely. PSP does not have a shortage of pilots paid and on duty and ready to
22 work. Rather, it is improperly managing its watch and pilot availability. If dispatchers are
23 “having to beg pilots to take jobs,” it only serves to prove that the internal incentives set
24 up by PSP are actually disincentivizing some pilots to go to work. To be fair, the facts
25 indicate that there is also a harder-working segment of the pilotage corps that steps up to
26 do more than their allotted share of the work. But the fact that others are allowed to sit

1 back, get paid, and watch others do large portions of the work is quintessentially a
2 staffing mismanagement issue, not a resources issue. Therefore, I agree, that if PSP
3 properly managed its pilot resources “callbacks would only occur a small percentage of
4 days in the year.”

5 This also affirms that changes in the tariff will not alleviate callbacks, stop delays, or
6 change the number of pilots. Indeed, increasing pilot pay without first addressing pilot
7 staffing and assignment management issues will likely only make the incentive to get
8 paid for not working even greater. This is backwards and would force further inefficiency
9 onto customers and into the pilotage system.

10 Q: Have you reviewed the testimony of Dr. Sami Khawaja at Exh. SK-1T-5 to SK-1T-10?

11 A: Yes.

12 Q: Do you agree with Dr. Khawaja that a change to the tariff by the UTC should be based
13 on an assertion of “the marginal benefit of adding a pilot” versus “the marginal cost
14 [which] is the income of the added pilot” (Exh. SK-1T-5)?

15 A: No. The tariff sets the cost of providing pilotage services to vessels, not the income of a
16 pilot. The income of a pilot is a function of the private by-laws of PSP and is not set by
17 the tariff. There is no specific function of marginal benefit or marginal cost to vessels
18 associated with the number of pilots. Moreover, vessels only pay the published tariff rate,
19 which is not variable with the number of pilots or with pilotage assignments or callback
20 status.

21 Q: Do you agree with the assertion that callbacks “represent time pilots are working while
22 off duty” (Exh. SK-1T-6)?

23 A: No. According to PSP’s Financials, pilots are never off-duty and are credited for 365
24 days of duty time per year. Exh. JN-04, pg. 23-26.

25 Q: Do you agree with the assertion that there is an identifiable “trend” which “implicates the
26 need for additional licensed pilots in order to avoid the unpredictable expansion of the

1 callback calculation accrual” (Exh. SK-1T-6)?

2 A: No, there are no identifiable tariff-related trends which are a variable correlated with
3 callbacks. I do agree with Dr. Khawaja that callback calculation accrual is
4 “unpredictable.” This unpredictability is due to lack of management of the watchkeeping
5 system, not the tariff. The tariff is exceedingly predictable. The unpredictability here
6 only serves to confirm that there is no identifiable trend upon which UTC can rely with
7 respect to PSP’s callback inefficiencies. And, even if there was a trend of an “expansion”
8 of callback accruals, the simplest, cheapest, and most direct way to avoid such an
9 expansion of callback accruals would be for PSP to make its assignment and watch
10 standing system more efficient, not to raise rates.

11 Q: Do you agree with the scenario submitted by Dr. Khawaja (Table 4, Exh. SK-1T-6-7)
12 whereby adding new pilots will eliminate callbacks and that there are clear marginal
13 reductions in callbacks associated with adding pilots?

14 A: No. As mentioned before, there is no clear consistent correlation between adding pilots
15 and reductions in callbacks. It is naïve to believe that adding pilots will reduce callbacks
16 unless PSP adjusts its by-laws to make pilots more available for assignment. Dr.
17 Khawaja believes that there will be fewer vessels and assignments (Exh. SK-1T-4-5), so
18 he doesn’t believe callbacks will increase because of additional increases in demand for
19 pilotage assignments. Instead, his only recommendation to reduce callbacks is to increase
20 the number of pilots, so he must believe that there is an insufficient supply of existing
21 pilots and existing pilot duty days. This is simply untrue. Note in the PSP 2018
22 Financials (Exh. JN-04, pg. 22), there were 11,047 days, over 60% of the 18,372 pilot
23 “duty” time days that year, when pilots were on “duty” and being paid, but not moving
24 any ships. There is obviously no shortage of actual “duty” days when pilots could be
25 assigned to cover assignments.

26 Q: Should the UTC set a tariff based on an assumption that it needs to underwrite the

1 income of 11 new pilots that do not exist and at a Target Assignment Level of 118
2 assignments per year?

3 A: No. The regulations adopted by UTC for the purposes of governing this tariff setting
4 process do not account for ghost pilots or some other theoretical number of non-existent
5 licensees. Instead, to the extent that the UTC considers the number of pilots it should
6 only take notice of the actual number of licensed pilots set by the BPC, consistent with
7 WAC 480-07-525(4)(n), respecting that Board’s determinations with respect to their
8 obligation under the Pilotage Act to set a number of pilots capable of providing an
9 efficient pilotage service. Under this authority, the BPC reaffirmed in July 2019 that the
10 Target Assignment Level is 145 (Exh. SK-1T-9)

11 Q: Does recognition of the current “number of pilots licensed in the pilotage district”
12 generate the revenues necessary to support the actual, and essential, operations of PSP?

13 A: The tariff is not a theoretical construct and it must be based on actual costs and service
14 provided to vessels. To do otherwise would be to admit that the tariff is not set based on
15 actual pilot assignments and service but instead set simply to accommodate PSP’s desires
16 to share greater future tariff revenues amongst themselves. As this is the first time
17 proceeding through this process, the UTC and BPC must work together to respect the
18 legal bifurcation of their duties and also jealously guard their own authorities to ensure
19 efficiency, competitiveness, transparency, and accountability. The state’s policy goals,
20 vessel safety, and fairness to ratepayers are not served if either the UTC or BPC even
21 inadvertently devolve their powers to one another.

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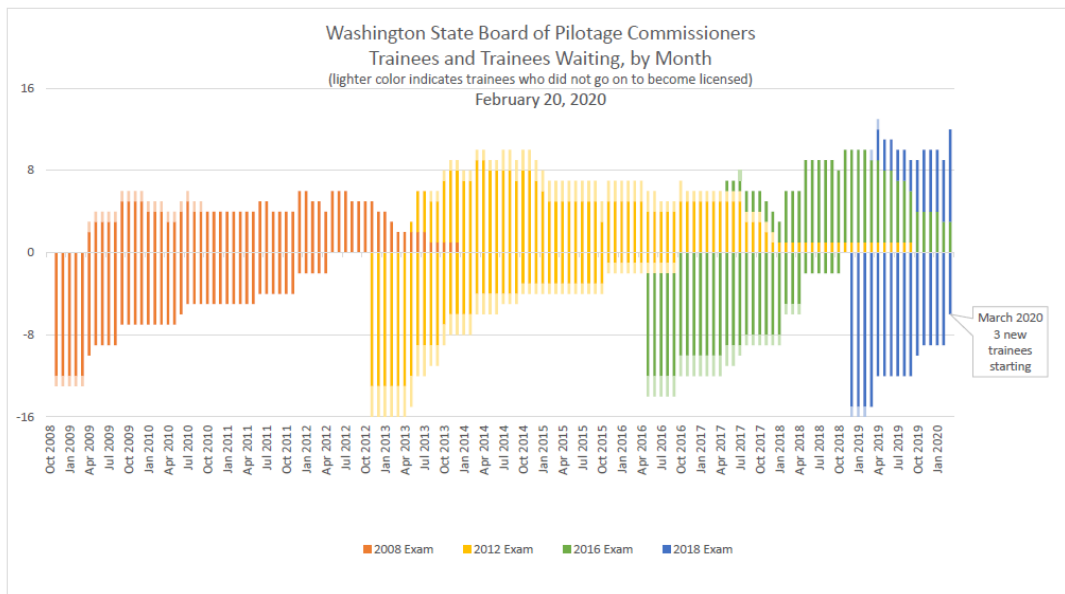
1 **VI. THE PUGET SOUND IS AN EXCEPTIONALLY ATTRACTIVE PILOTAGE**
2 **GROUND TO PROSPECTIVE TRAINEES AND THE CURRENT TARIFF IS MORE**
3 **THAN CAPABLE OF PRODUCING ADEQUATE NUMBERS OF PILOT TRAINEES**

4 **A. The Pool of Pilot Applicants and Trainees Has Never Been Bigger Than Under the**
5 **Current Tariff**

6 Q: Has the Puget Sound ever seen bigger classes of prospective pilot candidates than the
7 BPC has experienced since 2015 under the current tariff?

8 A: When the latest class of new Pilot Candidates in waiting is added to the previous exam
9 class, the list of all candidates is the biggest ever. We have never seen a larger queue of
10 potential pilot trainees than we are experiencing right now under the current tariff, as
11 shown by the chart below. [Exh. JR-4]

12 *Figure EE. Trainees and Trainees Waiting, by Month*



23 To read this chart, one analyzes the overall height of the bar, including the counts of
24 trainees actively training in the BPC program above the zero line and the counts below
25
26

1 the zero line which indicate candidates waiting to begin training, which is the combined
2 total queue of Board qualified candidates.

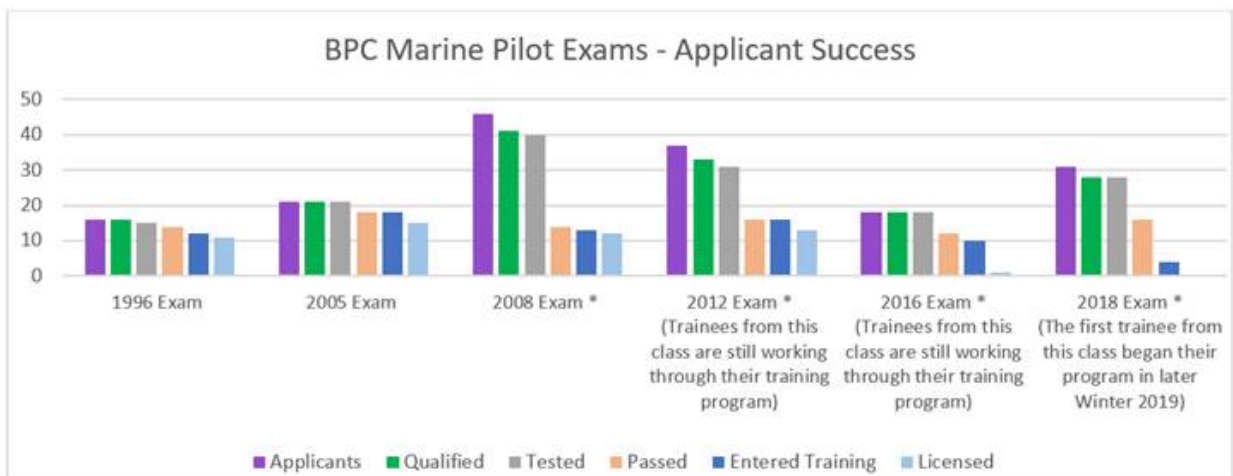
3 Q: Is the current large class in excess of the regular pattern in growth of the candidate
4 queue?

5 A: Yes. After every exam the queue naturally gets larger but there have never been as many
6 queued up as there have been the last two years under the current tariff and including the
7 PSP test period. After the 2018 exam results, there were a record high number of 26
8 candidates in queue.

9 Q: Can you please describe the size of the 2016 class and the 2018 class of candidates, both
10 of which were selected under the current tariff?

11 A: There was a smaller group of initial applicants and individuals taking the 2016 exam than
12 in prior years, but the actual class of candidates who made it onto the Board list of exam
13 qualified candidates was adequate and only slightly smaller than in previous exams and
14 under different qualification and exam procedures. Meanwhile, from 1996-2018, no
15 exam has had more applicants pass than the 2018 Exam. [Exh. JR-5] This is illustrated in
16 the BPC 2018 Annual Report:

17 *Figure FF. BPC Marine Pilot Exams – Applicant Success*



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

1 Q: Can you explain why the numbers of applicants, tests, and total applicants passing the
2 exams are so different between the 2016 Exam, which produced a class slightly smaller
3 than previous exams, and the 2018 Exam, which produced the largest class of passed
4 applicants under the new procedures established since 2008, even though they both
5 occurred under the same rates and under the current tariff?

6 A: Yes. The number of trainees entering the Puget Sound pilotage district training program
7 is unrelated to the tariff.

8 Q: So, under the same unchanged tariff and the same unchanged set of exam rules, the BPC
9 Exam is capable of generating both a historically large class of applicants and both a
10 historically small class of applicants?

11 A: Yes, because the size of a class of applicants is not directly correlated with pilotage rates.

12 **B. Local Pool of Potential Pilot Applicants Has Historically Provided Adequate**
13 **Numbers of Prospective Pilot Trainees**

14 Q: In your experience in the Puget Sound region, have you ever been concerned about a lack
15 of qualified candidates interested in becoming Puget Sound Pilots?

16 A: No. There have always been qualified candidates in queue either training or waiting to
17 start training. The BPC regularly publishes exam results and the Training Evaluation
18 Committee of the BPC maintains a current list of trainees and those on the waiting list.
19 At no time since I have been engaged in the Puget Sound has the BPC ever announced,
20 discussed or produced evidence that there were no qualified candidates in training or
21 waiting to train.

22 Q: How does the candidate pool break down by the industry source of the trainees?

23 A: The most consistent sources of pilot applicants and trainees tend to come from the local
24 ranks of the regional tug companies in the Puget Sound, from cargo and tank vessels, and
25 from Washington State Ferry system masters. [Exh. JR-20] See this excerpt from the
26 JTC Report, at Exh. 13:

1 Figure GG. Sea Service Experience of Pilot Exam Applicants, 2008, 2012, and 2016

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

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

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

14 *Source: Washington State Board of Pilotage Commissioners, 2017.*

15 Q: Is this consistent with the historical candidate pool breakdown?

16 A: Yes, the candidate pool breakdown provided by the BPC for the last 5 exams has been
17 very consistent with respect to candidate pool breakdowns. [Exh. JR– 31] I have not seen
18 or heard of other pilotage districts attracting this level of diversity, including other pilots,
19 to their exams.

20 Q: Why is the Puget Sound so attractive to a diverse array of potential trainee candidates?

21 A: The Puget Sound is blessed with a regional maritime workforce that is home to many
22 more mariners with existing federal pilotage endorsements than most other areas of the
23 country. A large tug fleet, the largest ferry system in the U.S., a large costal trade
24 presence with U.S. Jones Act cargo and oil tankers, and the Alaska Marine Highway
25 masters serving as pilot and pilots from Alaska willing to give up pilot licenses there to
26 train and pilot here, all constitute a large candidate pool. We also have a military vessel

1 presence with the Navy and Coast Guard producing candidates from time to time.

2 Q: Do these potential pilot labor pools work comparable hours or earn comparable wages to
3 Puget Sound Pilots?

4 A: No, these potential pilot trainees come from sectors that work on board vessels for many
5 more hours and for much less compensation than a Puget Sound Pilot. For example, tug
6 operators typically requiring masters to work a full and traditional maritime schedule and
7 they do not go home when not on watch as they are still on board. They are well regarded
8 for their long hours and stand-by service capabilities and like other maritime sectors have
9 made changes to do that while managing fatigue. Tug operations have remained a
10 significant source of pilot trainees. In addition, masters of vessels in the Washington
11 State Ferry system must carry a federal pilotage endorsement, similar to that held by a
12 Puget Sound Pilot (see Section XI, below), but WSF masters are working a full-time
13 schedule, based on a standard full-time pay period, and as of July 1, 2020 their earnings
14 will be based on a wage with a range of \$55/hour to \$71/hour. [Exh. JR-21]

15 Q: Are you concerned by PSP claims that the Puget Sound pilotage district is losing
16 candidates to other districts, specifically to San Francisco?

17 A: No, and for multiple reasons. First, the breadth and depth of our local pool of candidates
18 is exceptional and has never resulted in us not having enough local and regional
19 candidates for local and regional jobs. Second, the 2018 exam class produced the most
20 candidates to make the list, thereby making the queue of candidates the largest. This
21 actually means that it will potentially take some of our trainees longer to get into our
22 Puget Sound program than it will other places. While waiting longer may mean some
23 trainees choose to take another opportunity, this is not a reason to be concerned about our
24 ability to attract talent. Indeed, being popular doesn't mean that our training program is
25 less attractive; when your training program is so popular that you're turning people away,
26 it actually means that your training program is very attractive.

1 Q: Has the Puget Sound been competitive for trainees with other pilotage grounds?

2 A: Yes, the Puget Sound remains competitive for pilot trainees. PSP is bemoaning the loss
3 of potential trainees to San Francisco, but it omitted the critical fact from its testimony
4 that the Puget Sound is already attracting the same trainee candidates as San Francisco.
5 This is prima facie evidence that the Puget Sound and San Francisco are both competitive
6 for pilot trainee candidates. [Exh. MM-31, Exh. JR-13] The current lists show that
7 trainee candidates have taken exams and joined candidate lists in both of these pilotage
8 grounds. What the data shows is that these candidates who are on both the Puget Sound
9 and San Francisco lists started training in the grounds that offered the first opportunity.
10 With trainee lists that have yet to be exhausted, both pilotage grounds are effectively
11 competing for trainees without any detriment.

12 Q: Have you ever been concerned about the qualification, screening, or testing criteria of the
13 BPC or seen any indication that they were lowering application standards for prospective
14 trainees?

15 A: No. With respect to testing and qualification criteria, to the contrary, during my time in
16 Puget Sound the BPC has sought to improve their qualification and screening procedures
17 through a revamped test development and evaluation and through the addition of a
18 simulator evaluation. PMSA has been supportive of the BPC's move towards more
19 rigorous testing and additional evaluations of potential new trainee applicants. With
20 respect to "lowering" the application criteria, in 2008 the BPC made one major change in
21 the criteria for applicants with respect to the need for them to hold an appropriate federal
22 pilotage endorsement prior to application, and instead made this a criteria of progression
23 through the training program for trainees, so if they did not already hold federal pilotage
24 endorsements for the district that one could be earned concurrently with state license
25 training. I did not view this as a problematic change since the federal endorsement is still
26 required and this functionally only changed the standards for application to take the

1 exam, and the exam no longer needed to include local knowledge questions as that would
2 be covered in the training program. As a result, you'll note that in 2008 and 2012 the
3 BPC received record numbers of applications to sit for the exam, but the standards
4 required to make the cut created passage rates which were exceptionally low and the
5 ultimate size of each exam class was in line with normal historic numbers. [Exh. JR-20]

6 **C. Qualified Licensed Mariners with Pilotage Endorsements Changing Pilotage**
7 **Grounds Mid-Career are Rare, But Multiple Licensed Pilots from Other Pilotage**
8 **Districts Have Come to the Puget Sound**

8 Q: Are there other pilots who work in other pilotage areas who come to work in Puget
9 Sound?

10 A: Yes. Puget Sound has seen state licensed pilots in Alaska and masters serving as pilots
11 with federal endorsements working in the Alaska Marine Highway System choosing to
12 give up their licenses mid-career and leave those pilot grounds for the opportunity to
13 train and be licensed to operate in Washington. [Exh. JR-14]

14 Q: Did you review the testimony of Stephan Moreno at Exh. SM-1T-1-23 and his answers to
15 PMSA's Discovery Requests?

16 A: Yes.

17 Q: Do you agree with Capt. Moreno's assessment that "[i]t is rare that a pilot is licensed in
18 one district and then subsequently relocates" (Exh. SM-1T-6)?

19 A: Yes, I agree.

20 Q: Are you at all surprised by Capt. Moreno's testimony that it is his "understanding that
21 there are approximately twelve hundred state licensed pilots in the United States. In my
22 twenty-nine years of piloting I am aware of roughly ten pilots who have left their district
23 for another pilotage district" (PSP Response to PMSA DR 359)?

24 A: No, I'm not surprised and I agree with him that it is indeed a very rare event and find his
25 estimate that mid-career relocation out of one state pilotage ground into another
26 nationwide to be only about 00.83% of all possible employment scenarios to be credible.

1 Q: What does this testimony demonstrate to you?

2 A: Once a pilot is licensed in one pilotage ground, there are virtually no factors which
3 suggest that they will not be retained in that pilotage ground through the entirety of their
4 careers. Moreover, in Captain Moreno's testimony, he asserts that 30% of the identified
5 pools of those who have transferred mid-career between pilotage grounds chose to go to
6 the Puget Sound, so obviously it is one of, if not the, most attractive place to pilot in the
7 country. The Puget Sound has been able to benefit from what is relatively rare
8 everywhere else in the country: pilots who have chosen to leave active and existing
9 pilotage licenses somewhere else in the country for the opportunity to enter into another
10 training program. I agree with Capt. Moreno that the Puget Sound is one of the few
11 attractive pilotage grounds where mariners will choose to come and "effectively start all
12 over." (Exh. SM-1T-6)

13 Q: Have any pilots licensed by the State of Washington to pilot in the Puget Sound ever left
14 actively piloting to start all over with a new licensing program somewhere else in the
15 country?

16 A: We have no evidence that any pilot licensed to serve and serving in the Puget Sound has
17 ever left.

18 **D. PSP Claims About Attracting "Best" Candidates Are Subjective and Arbitrary**

19 Q: Do you agree with PSP testimony that "the best qualified and most desirable candidates
20 will naturally compete for the openings in the pilot associations that have the highest
21 income and best working conditions" (Exh. GQ-1T)?

22 A: No. The working theory that only some candidates are "best" or "most desirable" even if
23 they otherwise meet all of the state's licensing standards of qualification, have passed the
24 exam, and completed state-required training are inconsistent with the facts, subjective,
25 and arbitrary. We strongly disagree with any implications that the BPC standards of
26 qualification for potential qualified candidates, including the requirement that trainees

1 acquire their federal pilotage endorsement prior to state licensing, are good enough for
2 purposes of providing navigationally competent and safe services to vessels, but then
3 these same standards are somehow lacking when it comes to setting a tariff for these
4 same services.

5 Q: Do you know how one would determine whether or not pilots which met a licensing
6 threshold for competency still would not qualify as the “best” potential candidates?

7 A: No, this is a binary operation, either a potential licensee qualifies under the licensing
8 standards or they do not. The state fortunately provides clear guidance with respect to
9 their qualifications for potential licensees, and the pipeline of potential candidates is
10 consistent and continuous. Statements like these by PSP imply that some Puget Sound
11 pilots are less than qualified – but neither BPC nor the Training and Evaluation
12 Committee have moved to revoke a license, and they provide no public evidence of cause
13 to do so. The BPC has determined, and improved, the standards that must be met in order
14 to earn a license and candidates must meet them (or not). If PSP or individual pilots think
15 the process has produced substandard pilots that shouldn’t be licensed then there should
16 be documentation of such concerns and votes by pilots on the BPC and TEC reflective of
17 such concerns on record against licensing someone that PSP thought was not deserving
18 of a license.

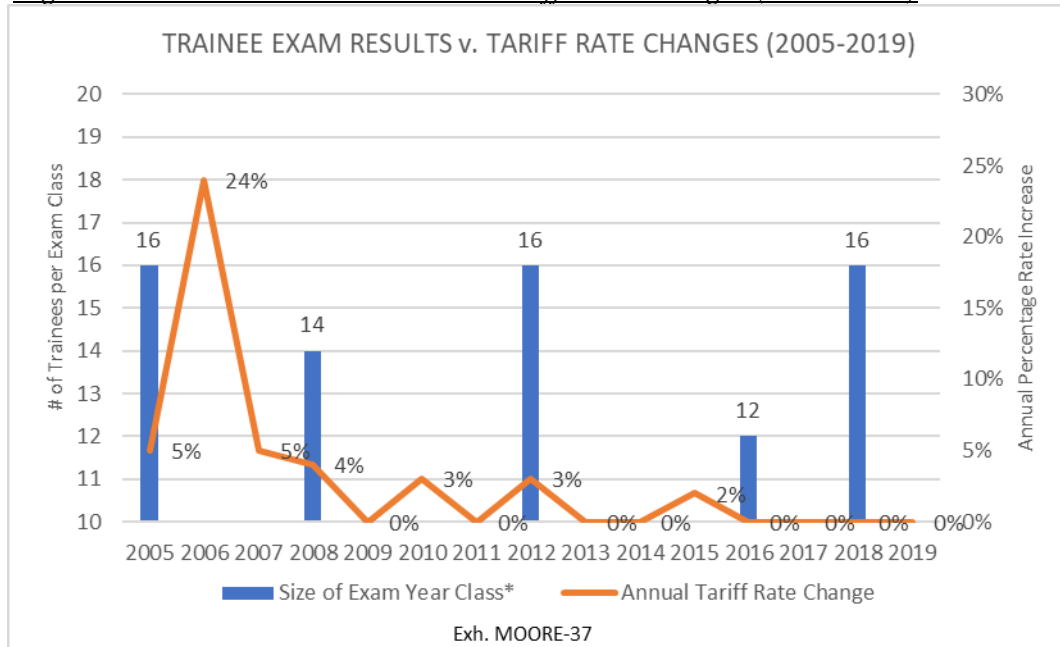
19 **E. There is No Correlation Between Number of Applicants and Changes in Tariff**
20 **Rates**

21 Q: Historically, has the number of pilot candidates been correlated with tariff rate changes?

22 A: No, changes in the tariff are not correlated with increases or decreases in the number of
23 pilot candidates. In short, we have the same size of successful trainee classes in 2018 that
24 we had in 2005 and 2012, all very different tariff rate change years, at 16 per class. While
25 there are not very many data points, the only conclusion that can be inferred from the
26 past 15 years of trainee exam data is that there is no correlation between tariff increases

1 and the size of qualified trainee classes. For example, the largest increase in the tariff
 2 (24% in 2006) was followed by a drop in the size of the next trainee class in 2008. By
 3 contrast, during the current tariff period, when there were no approved rate increases, we
 4 saw successful applicants grow the exam successful trainee class size from 12 in 2016 to
 5 16 in 2018. [Exh. MM-37]

6 *Figure HH. Trainee Exam Results v. Tariff Rate Changes (2005-2019)*



17

18 Q: Under the current tariff has the number of pilot candidates changed even when rates have
 19 not been changed?

20 A: Yes, while the rates in the current tariff have not increased from 2015 to 2019, the
 21 number of successful pilot candidates in the queue over that same time period has
 22 increased. [Exh. MM-27]

23 Q: What do you conclude from this data comparison?

24 A: There are plenty of high-quality candidates that can pass the exam and simulator to join a
 25 screened and approved candidate list regardless of actions taken to change the tariff. The
 26 Puget Sound is an attractive pilotage district under the current rate structure and the

1 history demonstrates that the pool of applicants to fill license slots as determined by the
2 BPC has been consistently more than enough to ensure a candidate training queue is
3 always available to start a candidate training when the Board deems it necessary. No
4 training slot has ever gone unfilled by a qualified and approved and trainee licensed
5 candidate at any tariff level, at any revenue level, or at any pilot assignment level. In my
6 opinion this shows that our training program is a tremendous success and our pilotage
7 ground has always been attractive to potential trainees – this is the opposite of a problem.

8 **VII. THE CONDITIONS OF PILOTING IN THE PUGET SOUND**

9 **A. No Material Changes in Piloting Service Have Occurred from 2015 to Present**

10
11 Q: Have there been any significant or material changes in the standards of care applicable to
12 state pilot licensees from 2015 to present?

13 A: No.

14 Q: Have there been any significant or material changes to the navigational rules of the road
15 applicable to the navigable waterways of the Puget Sound from 2015 to present?

16 A: No.

17 Q: Have there been any significant or material changes to the training required of state pilot
18 licensees from 2015 to present?

19 A: No.

20 Q: Have there been any significant or material changes to the civil liability statutes which
21 impact state pilot licensees from 2015 to present?

22 A: No.

23 Q: Regarding PSP claims summarizing “Piloting in the Puget Sound,” have you reviewed
24 the testimony of the PSP President at Exh. EVB-1T-6 to EVB-1T-11?

25 A: Yes.

26 Q: Without agreeing or disagreeing with any of the specific claims therein, do any of the

1 PSP claims regarding “Piloting in the Puget Sound” demonstrate any significant or
2 material changes in the nature of the task of piloting in the Puget Sound from 2015 to
3 present?

4 A: No.

5 Q: Without agreeing or disagreeing with any of the specific claims therein, do any of the
6 PSP claims regarding “Piloting in the Puget Sound” demonstrate any significant or
7 material changes in the inherent risks associated with the provision of pilotage in the
8 Puget Sound from 2015 to present?

9 A: No.

10 Q: Without agreeing or disagreeing with any of the specific claims therein, do any of the
11 PSP claims regarding “Piloting in the Puget Sound” demonstrate any significant or
12 material changes in the safety afforded pilots in the Puget Sound from 2015 to present?

13 A: No.

14 Q: Without agreeing or disagreeing with any of the specific claims therein, do any of the
15 PSP claims regarding “Piloting in the Puget Sound” demonstrate any significant or
16 material changes in the requisite training or education required of existing licensees in
17 the Puget Sound from 2015 to present?

18 A: No. Of course, there is always some information sharing when appropriate between the
19 US Coast Guard, the Harbor Safety Committee, PSP, and the maritime community with
20 respect to changes in pilot guidelines or the Harbor Safety Plan or actions by the Board
21 or other procedures that are appropriate for all pilots, but none of these routine updates or
22 revisions from 2015 to 2019 were particularly substantial.

23 **B. Funding for PPU's Was Provided in the Tariff Prior to 2015 and that Tariff Increase**
24 **Has Continued Since 2015**

25 Q: What resources to assist in piloting are provided to pilots in the Puget Sound to assist
26 them in completing their tasks?

1 A: All pilots in the Puget Sound are provided with Portable Pilot Units (PPUs) by PSP.
2 PPU's are specialized laptops provided to each pilot that give pilots additional
3 navigational data and information to consider as they complete a pilotage assignment or
4 vessel move. PPU's were provided over the period of 2013 - 2014, and the BPC adopted a
5 PPU training regimen in January 2014. [Exh. JR-22]

6 Q: Did the provision of PPU's to pilots in the Puget Sound occur before 2015?

7 A: Yes.

8 Q: Has PSP already asked for the tariff to be increased to account for the cost of PPU's in
9 prior tariff requests?

10 A: The inclusion of the cost of PPU's in the existing tariff was made explicit by PSP in their
11 ask for a 15% rate increase at the November 2012 rate hearing. [Exh. JR-23] Ultimately,
12 in response to this request, the BPC agreed to a 3% tariff increase "with the expectation
13 the PPU's be purchased." [Exh. JR-23]

14 Q: For the entirety of this current tariff period has the additional revenue provided in an
15 increased tariff before 2015 been continuously available to PSP to provide for the
16 continued provision of PPU's to pilots?

17 A: Yes. The increase in the tariff effective January 1, 2013 means that PSP was collecting
18 this increased tariff revenue well before the purchase of the initial PPU's. However, the
19 BPC did not set a specific tariff rate or surcharge to "fund" specific costs related to
20 PPU's, so if PSP chose to use those revenues for some other purpose, like for pilot
21 income distributions, there is no prohibition of such a use of tariff proceeds.

22 Q: Has PSP collected sufficient revenue under the current tariff to fund the purchase and
23 costs of PPU's for its members?

24 A: Yes, under the current tariff, PSP will have collected more revenue than the costs of the
25 PPU's many times over since 2012.

26 Q: If the current tariff structure and rates remain unchanged will pilots in Puget Sound still

1 be able to utilize PPU's?

2 A: Yes, PPU's are a tool available for pilots to use independent of any level of tariff set by
3 the UTC.

4 Q: Has PSP asked the BPC for any other changes to the requirements of pilotage or material
5 provisions of service which are remarkably different than that required for the regular
6 provision of pilotage since 2015?

7 A: No.

8 **C. Risks to Pilot Safety are Regulated, Mitigated, and Enforced and Those Risks Have**
9 **Not Increased Since 2015**

10 Q: Can you describe risks to pilot safety involved in the act of pilotage and what precautions
11 the industry takes to address and mitigate these risks?

12 A: Yes. Pilot safety is an important consideration of vessel operations and it is important
13 that all vessels follow international, federal, and state laws which exist to protect the
14 safety of all of the professional mariners onboard their vessels, not the least of which
15 include the pilots. The principal risk to the safety of the pilot occurs when boarding or
16 disembarking a vessel when underway via a pilot ladder or under circumstances when an
17 accommodation ladder is appropriate.

18 Q: What rules require vessel operators to provide for pilot safety and how are these rules
19 enforced in the Puget Sound?

20 A: At the international level, SOLAS provides for pilot ladder regulations at Chapter V,
21 Regulation 23. These rules were first adopted in 1974 and were most recently updated
22 and amended in 2011. IMO, Resolution A.1045(27). At the federal level, the US Coast
23 Guard enforces these international pilot ladder regulations along with inspections under
24 both port-state control and flag-state control mechanisms against vessels in port with
25 reported pilot ladder deficiencies. At the state level, the BPC can investigate pilot ladder
26 incidents just as they review any reported marine safety occurrence.

1 Q: Is it fair to say that in your experience both in the US Coast Guard and as a maritime
2 industry executive that vessel owners and operators are aware of these rules and place a
3 premium on the observation of these rules?

4 A: Yes. It is my personal experience that rules which deal with mariner safety, including
5 these provisions with respect to pilot safety, are typically well-understood, respected, and
6 executed by vessels that are operating in US waters. And pilot ladders are used routinely
7 in their operations. Vessels that don't maintain their equipment in good operating order
8 are subject to denied entry and black marks on their record which impacts whether they
9 can enter port, require special operational measures and receive more frequent and
10 comprehensive port state control examinations. Nevertheless, all in the safety system
11 must remain diligent to maintain compliance and meet or exceed standards.

12 Q: Do pilots have remedies and processes in place whereby they can bring complaints
13 against vessels which have substandard or insufficient accommodations for pilots or to
14 advise authorities when they believe pilot safety is compromised?

15 A: Yes. Pilots can, should, and do raise these complaints both directly to the US Coast
16 Guard and to the BPC through these complaint processes and have the ability to
17 determine if a situation is unsafe, refuse service, or anchor the vessel safely.

18 Q: Has the enforcement of rules regarding pilot ladder conditions received more scrutiny or
19 become more lax since 2015?

20 A: Pilot ladder conditions have received additional scrutiny recently as a result of some
21 unfortunate accidents and experiences by pilots. As a result, pilot ladder conditions have
22 been highlighted for attention and additional focus from time to time by Coast Guard and
23 BPC. This additional focus and attention should continue as vigilance and reporting
24 should continue to maintain reduced risks and additional safety benefits to pilots.

25 Q: Are pilots the only maritime workers who utilize the pilot ladder or an accommodation
26 ladder as a means of vessel boarding and departure while underway, at anchor, or even at

1 the dock on occasion?

2 A: No.

3 Q: What other workers might also utilize a pilot ladder or accommodation ladder and how
4 does that enhance safety for pilots?

5 A: The US Coast Guard itself, both for marine safety and law enforcement purposes, trains
6 and then boards on vessels when underway, at anchor or alongside, which means that the
7 individuals who are responsible for enforcing the rules on pilot ladder safety also know
8 that their colleagues are also potentially at risk if faced with a deficient or unsafe ladder
9 on a vessel during such boardings.

10 Q: In your experience, who is exposed to greater variables of risk associated with boarding
11 vessels underway, pilots or members of the US Coast Guard?

12 A: They are very different jobs, pilotage and law enforcement, so it is nearly impossible to
13 compare. When the US Coast Guard is performing a law enforcement or marine safety
14 task, the nature and types of risk can be numerous and vary widely given the potential
15 circumstances of the boarding. I am familiar with very challenging Coast Guard
16 situations where in difficult conditions with vessels that, while hardly cooperative,
17 needed to be boarded. I am also aware of pilot boarding situations that were very
18 challenging in terms of timing movements to get on the ladder due to difficult conditions.
19 Boardings for pilots as discussed above, are regulated by international, federal, and state
20 authorities with the express intention of mitigating risks to pilot safety and managing the
21 variables. We are very fortunate that, for the most part, these regulations work to keep
22 pilots safe, that vessels have compliant ladders and boarding areas when required which
23 are designed to facilitate effective pilot transfers, and we have very few complaints about
24 inadequate ladders. I have done my share of boardings and have always been impressed
25 with the ability and focus of mariners, including pilots and US Coast Guard boarding
26 officers to professionally assess the situation and make smart risk-based adjustments to

1 ensure safety.

2 Q: Are vessel boardings in the Puget Sound different based on the types of vessels calling?

3 A: Yes, different vessel types require different types of pilot boarding or disembarkation.
4 For example, some vessels require a pilot to climb a certain distance up the side of the
5 ship to get to a main deck, but a cruise ship or large container vessel or a car carrier due
6 to their construction utilizes a pilot port which is much nearer to the level of a pilot boat,
7 making the exchange easier and safer. The more prominent appearance of Articulated
8 Tug-Barge (ATB) traffic on the Puget Sound, with a relatively low profile and pilot
9 ladder has lower freeboard and mitigates some of the pilot boat-to-ship transfer risks.
10 Every boarding has its own dynamics.

11 Q: Does the current vessel mix calling the Puget Sound pose lower, the same, or higher
12 safety profiles with respect to the pilot exchange than compared to before 2015?

13 A: We have a similar mix now, however as we see fewer cargo ship calls and assignments,
14 risks are reduced simply because there are fewer pilot exchanges. With respect to the
15 vessels that are calling, larger container ships, cruise ships and ATB's continue to be a
16 significant percentage of pilot assignments and have been for several years, which
17 comparatively reduces overall risks related to transfers. These are trends which should
18 reduce risks and enhance safety over time.

19 Q: The Puget Sound Pilots' testimony claims that the risks related to the operations of
20 vessels are imputed to the pilots themselves. For example, on page EVB-1T-6, Capt. Von
21 Brandenfels states that in certain instances "a pilot... is the person ultimately responsible
22 for ensuring [a vessel's] safety. For pilots, that means we are the one ultimately
23 responsible ..." Do you agree with this characterization of pilot responsibility for vessel
24 safety?

25 A: No. Pilots are not on-board to replace the vessel master's ultimate responsibility for the
26 safety of the vessel, crew, and operations. A pilot is an important advisor to a vessel's

1 master when on-board, yet a master does not, cannot, and has not surrendered final say,
2 control, or responsibility over his or her vessel to a state-licensed compulsory pilot.

3 **D. Risks to Vessel Safety from Pilotage in the Puget Sound Have Been Decreasing**

4 Q: One of PSP's justifications for an increase in rates is that they are exposed to risks based
5 on vessel safety issues as ships get larger, do you believe this to be true?

6 A: No, that has not been my experience, and often the opposite is true.

7 Q: Do general industry trends enhance vessel safety or increase risks to vessel safety?

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

18 Q: If there were enhanced risks to pilots from vessel safety, how would you recommend one
19 evaluate whether the risks associated with state licensed pilotage and their claimed
20 responsibility for vessel safety issues are increasing or decreasing?

21 A: A primary source for the reporting of all Marine Safety Occurrences and Incidents which
22 involve a state licensed pilot in the Puget Sound to the public is the BPC Annual Report.
23 The BPC Annual Report is required by RCW 88.16.035 to include a summary of the
24 Board's Navigational Incidents.

25 Q: Has PMSA analyzed the relative increase or decrease in risks to pilots from vessel
26 operations and safety from 2015 to 2018?

1 A: Yes, we have analyzed the data in the BPC Annual Reports from 2005-2018 [Exh. JR-8],
2 annotated it by adding in data procured from various sources online to provide us with
3 vessel particulars, including vessel age, vessel size, and vessel type [Exh. JR-19], and
4 compared the data from 2005-2018, 2005-2014, and 2015-2018 with respect to incidents
5 by vessel size, vessel length, vessel type, vessel age, incident location, and average
6 incidents per year. [Exh. MM-25]

7 Q: Describe the results of your analysis of vessel Incidents in the Puget Sound.

8 A: BPC's incident reports demonstrate that vessel safety on the Puget Sound is not
9 degrading or presenting additional risks to pilots. The rate of vessel incidents from 2015
10 to 2018 decreased to an annual average of incidents per year of 5.25. This is down nearly
11 20% compared to the 2005-2018 average of 6.5 incidents per year. [Exh. MM-25]
12 Generally, during the current tariff period, the rate of likelihood that a pilot will be
13 exposed to any vessel-based incident-related risk is low.

14 Q: Does vessel age correlate with an increased risk of having an incident while under
15 pilotage in 2015-2018?

16 A: No. Vessel aging has not resulted in an increased risk of having an incident while under
17 pilotage, in fact the overall average age of a vessel in an incident has stayed nearly
18 unchanged in 2015-2018 at 10.1 years. The largest growth in the age of vessels with
19 incidents occurred in the 11-15-year vessel age category. As for the newest vessels, the
20 risks posed by these vessels decreased. [Exh. MM-25]

21 Q: Are there certain waterways that correlate more heavily with additional pilotage
22 incidents?

23 A: This is hard to quantitatively determine without analyzing the relative number of trips to
24 each berth, port, or waterway, which we did not attempt to do in this analysis, and one
25 would need to establish a baseline number of trips against which a very small number of
26 incidents and then review the qualitative circumstances of each incident. And, changes in

1 terminal and port operations over that same period may impact an ability to determine
2 such a correlation. At any rate, with those provisos, it is possible to summarize the raw
3 data without additional analysis with respect to the total number of incidents in each
4 waterway and normalized by ship call mix and other related factors. What we found was
5 that 70% of incidents from 2005-2018 occurred in locations which did not establish a
6 pattern, as they had only experienced 1-3 incidents over 14 years. Three locations, the
7 Blair Waterway, Cherry Point, and the Duwamish Waterway, accounted for the
8 remaining 30% of the incidents. When one compares the current tariff period of 2015-
9 2018 with the prior period, these locations have either stayed nearly the same or seen
10 fewer incidents over time. [Exh. MM-25]

11 Q: Based on the correlative analysis and the table of raw data provided above, would you
12 conclude that the incident data show growing risks in 2015-2018 based on vessel
13 category or location?

14 A: No. The largest concentrations of incidents from 2005-2018 are in Container ships,
15 33.3%, Bulk Carriers, 23.8%, and Tankers, at 14.3% of total incidents. In the current
16 tariff period review, the biggest reduction in potential incident risk came from the
17 Container sector, which decreased to 23% of all incidents, and bulkers and tankers
18 reduced too. These vessels make up the largest swaths of vessels calling in Puget Sound,
19 but are accounting for less of the incidents in 2015-2018. [Exh. MM-25]

20 Q: Does pilot incident data from the BPC support a conclusion that the largest ships calling
21 in the Puget Sound, in particular at the Ports of Seattle and Tacoma, including
22 containerships and cruise ships, present growth in the highest risk of a pilotage incident?

23 A: No, we actually found that in the current tariff period from 2015-2018 that the average
24 tonnage of a vessel involved in an incident decreased slightly from the 2005-2018
25 average, as the fastest growing category of vessel incidents was in vessels of Tonnage of
26 0-20,000 GRT, which jumped from 19% of incidents to 28.6%. Other vessel sizes don't

1 seem to establish a conclusive outcome on the basis of size, as the two biggest declines
2 were in the 20,000-40,000 GRT category, a smaller vessel category, and in the 80,000-
3 100,000 GRT category, a category of vet large vessels. Not surprisingly, due to ship
4 architecture, the same patterns are very nearly replicated with respect to LOA as they are
5 to GRT. In both categories the overall average size decrease by incident and growth in
6 smaller vessel incidents certainly don't implicate larger vessels create additional risks for
7 pilots. [Exh. MM-25] It is also likely not a coincidence that these larger vessels tend to
8 be the newest, most modern vessels.

9 Q: In your opinion are there any public ports in the Puget Sound which ask pilots to move
10 vessels in waterways which are inherently unsafe?

11 A: No. Not only did our simple analysis of the available data regarding incident locations
12 confirm that there are no patterns showing obviously inherent unsafe waterways, but in
13 my professional experience if a waterway is not designed for the safe operation of a
14 vessel, or a specific class of vessel, that waterway would not be operable for a specific
15 vessel or a specific class of vessel. This would be particularly true in a waterway with a
16 licensed pilot employed, who is specifically employed to be a local waterway expert.

17 Q: Have specific practices been put in place to ensure that waterways are planned and
18 operated safely?

19 A: Yes, over the past 3 decades there has been increased use of simulators to test out
20 waterways and turning basins and transits of various size vessels under various
21 conditions. This is an excellent tool put to good use in Puget Sound. There is also a
22 multi-layer safety net in place, in addition to pilot and tug use guidelines, and regular
23 evaluations of conditions by the crew, US Coast Guard, VTS, and the pilot that manages
24 the safety of individual transits.

25 Q: Have the Ports of Seattle and Tacoma, either on their own or acting through the
26 Northwest Seaport Alliance (NWSA) worked to specifically improve vessel safety in the

1 waterways serving their berths and terminals?

2 A: Yes. The Port of Tacoma and NWSA have increased use of simulator evaluations of
3 projected ship traffic and ship sizes prior to bringing in larger vessels to the Blair
4 Waterway. They also are focused on gateway safety and efficiency and implemented a
5 team to work on that. A new position was developed to focus on managing the Blair
6 Waterway so vessels can be queued safely for navigation safety purposes, coordinating
7 cranes and bunker barges and the order of transits to help ensure safe transits particularly
8 of larger vessels. In addition, there are bathymetric checks in waterways frequent enough
9 to ensure that documented depths of water are accurate. These proactive efforts have
10 strengthened safety and waterways management and have not resulted in increased risks
11 to vessels or pilots.

12 Q: Is there a heightened general risk to pilots in their position due to a growth in the
13 presence of substandard or unsafe vessels since 2015?

14 A: No. The Coast Guard implemented a specific port state control program beginning in
15 1994 to eliminate substandard vessels and all waterways and ports with foreign vessels
16 calling have seen significantly decreased risk. I have direct involvement in this program
17 having been responsible for implementing it first in the Ports of Los Angeles, Long
18 Beach, and Port Hueneme, and then as Captain of the Port Puget Sound where I ensured
19 full implementation and focus on port state control given its significant value to
20 enhancement of marine safety and environmental protection. I also initiated the creation
21 of the Puget Sound Harbor Safety Plan, with Standards of Care to augment the regulatory
22 regime similar to efforts at my previous assignment in LA-LB. This voluntary ongoing
23 effort has been widely recognized and serves as a model to other port areas that have
24 followed suit.

25

26

1 **E. Changing Limits on Hours of Service Have Not Created Significant or Material**
2 **Changes in the Condition of Pilotage**

3 Q: Are you familiar with the recent changes to the Pilotage Act that expanded and clarified
4 the rules and regulations surrounding pilot rest periods and limitations on hours of
5 service?

6 A: Yes. The legislation changed the rest period requirement at RCW 88.16.103 from the
7 previous seven hour minimum rest period to a ten-hour minimum rest period with an
8 opportunity for eight hours of uninterrupted sleep following an assignment. It also
9 addressed circadian misalignment after three consecutive night assignments and imposed
10 a maximum limit on pilots of performing no more than 13 hours of work when
11 performing multiple assignments in combination.

12 Q: Does this new statute create a noticeable change in how the pilotage business in the
13 Puget Sound is conducted?

14 A: No. Vessel activity which impacts these limits is not a significant percentage of
15 assignments to begin with and PSP had already implemented an 8 hour minimum rest
16 rule and the “three and out” rule in 2015, so much of these statutory limits had already
17 been implemented. As described by Capt. Carlson, PSP had “adhered to more vigorous
18 rest requirements at the suggestion of fatigue management experts starting in 2015.”
19 (Exh. IC-1T-5)

20 Q: Did you participate in the process at the BPC leading up to a recommendation to the
21 Legislature to make these changes and did you participate in the process at the
22 Legislature to amend RCW 88.16.103?

23 A: Yes.

24 Q: Does PMSA support having adequate rest periods for pilots and maximum limitations on
25 the number of hours worked and on consecutive night assignments?

26 A: Absolutely.

1 Q: Do you agree with the PSP assertion that the primary method to address issues of fatigue
2 management is to add more licensed pilots, and that this should be a justification for an
3 increase in the tariff?

4 A: No. Aside from my personal objection to any assertion that there is a trade-off between
5 maritime safety and changes in the tariff, the fact remains that changing the tariff will not
6 impact pilot fatigue, because the tariff is unrelated to pilot assignments. Efforts to
7 manage pilot assignment-related fatigue or encouraging PSP to more effectively and
8 efficiently manage pilot assignments, should be occurring no matter what the tariff level
9 is and should not be conditioned on pilot incomes.

10 Q: Aside from the fact that fatigue issues are not resolved by tariff changes, why do you
11 believe that changing the existing fatigue rules do not represent a significant or material
12 change to the present conditions of pilotage on the Puget Sound?

13 A: The changes in the regulations regarding fatigue were not significant or material for
14 many reasons.

15 First, and foremost, the change in the statute did not change the fact that the
16 average pilot is only piloting on average 145 days per year or less. So, with 220 days off
17 in a year, there is no shortage of rest and fatigue management time, without any impact to
18 the pilotage service volume provided by PSP or to the assignment of pilots.

19 Second, there are no significant or material changes in conditions as a result of
20 this statutory change because in 2015 PSP had already adopted and was adhering to more
21 stringent internal fatigue limitations and mitigation measures years before the formal
22 change in the RCW.

23 Third, the only true measure of when fatigue is an impact on pilotage is when
24 “there are no rested pilots available at all, [and] the vessel will be delayed waiting for a
25 pilot.” (Exh. IC-1T-7) But these delays have been infrequent, so much so that in 2018, a
26 year when the more “vigorous rest requirements” were already being adhered to, there

1 were 70 instances of a vessel delay of any duration (Exh. IC-1T-8), out of 7,325 piloting
2 engagements - representing less than 1% of total engagements. And this presumes that
3 the reason for the delay is actually fatigue related and not simply a result of PSP
4 inefficiency or a by-product of mismanagement of its watch standing. With proper
5 management and the amount of time pilots have not piloting, there should be no delays.

6 Fourth, mitigation of 70 instances of vessel delay are well within PSP's ability
7 with existing staffing without stressing the pilotage system through improvements in
8 staffing management, efficiency, scheduling, and addressing less productive pilots'
9 unwillingness to make themselves available to even up the workload distribution
10 particularly when several pilots were simultaneously on not fit for duty status.

11 Q: What are the principle pieces of evidence that demonstrate that PSP pilots can effectively
12 mitigate the roughly 1% of additional pilot assignments potentially impacted by the
13 statute without causing excess fatigue or triggering the limitations of hours of service
14 regulations?

15 A: First, currently, PSP pilots have demonstrated that they can safely perform in excess of
16 200 assignments per year without triggering any violations of the existing safety or
17 fatigue limitations that are currently in place. See Section IV above.

18 Second, in years when they had more vessels to move, PSP has managed pilots
19 with higher target assignment levels per year and done so without triggering fatigue
20 issues or significant delays. [Exh. MM-20]

21 Third, many pilots are working assignments well under the average target
22 assignment level, leaving plenty of capacity for fatigue mitigation. For example, note that
23 in the PSP 2018 Financials, JN-04 there were 11,047 days, over 60% of pilot "duty" time
24 that year, when pilots were on "duty" and being paid but not moving any ships. There is
25 obviously no shortage of actual "duty" days when pilots could be assigned to cover jobs
26 without implicating fatigue. In 2018, 70 days of work out of 11,047 non-working "duty

1 days” represents 00.63% of outstanding pilot duty time. This level of impact hardly
2 represents a significant or material change, especially when one considers that 29 pilots
3 in 2018 averaged 22 assignments more than the target assignment level all while
4 managing fatigue in full compliance with rest rules.

5 **VIII. PILOTS ARE FULLY COMPENSATED BY VESSELS AT THE TIME SERVICE**
6 **IS RENDERED AND NO EXTERNAL RETIREMENT “LIABILITY” EXISTS**

7 **A. PSP is Fully Paid by Vessels for All Costs of the Provision of Pilotage Service in the**
8 **Current Tariff, Including Any Internal Obligations for Pilot Retirement Programs**
9 **Earned at the Time of Service**

9 Q: Are you aware of the existence of the “Amended Retirement Program of Puget Sound
10 Pilots” (PSP_000384 – PSP_000400)?

11 A: Yes.

12 Q: How would you characterize the PSP Retirement Program?

13 A: The PSP Retirement Program is a deferred compensation benefit for pilots, fashioned as
14 an unfunded defined benefit retirement, which is agreed to be paid out of pilot income by
15 all of the active members of PSP under Section 16.9 of the PSP By-laws.

16 Q: Are benefit payments made to the PSP Retirement Program by existing pilots subsequent
17 to receipt of tariff revenues paid by vessels for current pilotage services?

18 A: Yes, as described in the PSP Financials, the “[r]etirement payments are made from
19 currently earned PSP income,” which revenues are derived from the tariff which PSP
20 “management believes ... will continue to provide adequate funds, directly or indirectly,
21 in the tariff for the annual funding of the retirement plan expense.” PSP Financials, Exh.
22 JN-04, at 16, Note 6.

23 Q: Please describe how vessels pay for the costs of pilotage services provided, regardless of
24 PSP’s internal deferred compensation or retirement benefits agreements.

25 A: When a vessel calls on a port in the Puget Sound, it pays the current tariff for the pilotage
26 services rendered at the time of that port call. A vessel pays the tariff-approved rates no

1 matter whether the pilot providing the service or PSP is putting aside a portion of those
2 revenues for a defined contribution plan, or paying benefits on a pay-go basis, or whether
3 there is no functional retirement plan for a pilot. There is simply no provision in the tariff
4 which is a variable based on whether pilots' agreements for retirement benefits amongst
5 each other or for themselves are funded, unfunded, defined benefit, or defined
6 compensation. Under the PSP By-laws revenue is collected and pooled amongst all of the
7 pilots and then paid out to distributions, benefits and expenses subsequent to revenue
8 collection. As far as the vessel is concerned, the service has been delivered and once the
9 tariff rate designated for that service has been paid there are no further liabilities
10 associated with that pilotage engagement.

11 Q: If the service has been provided and the current tariff rate has been paid for that service is
12 there any other future "liability" associated with the provision of that service?

13 A: No. If PSP has received payment for a pilotage service provided pursuant to the tariff,
14 then any effort to collect any revenues other than those imposed exclusively by the tariff
15 would be unlawful. RCW 88.16.120.

16 Q: So if the collection of additional revenues for a service which has already been provided
17 and payment received would be unlawful, any retirement benefits "liability" that exists
18 would exist only on PSP's own books for its own internal deferred compensation
19 accounting purposes?

20 A: Correct.

21 Q: Independent of the question as to whether or not the current unfunded defined benefit
22 retirement plan is a sustainable retirement system, what is the relationship of this
23 retirement to the current tariff?

24 A: There is no relationship between the tariff and the PSP Retirement Program because the
25 tariff is not variable based on the Benefits agreed to be paid by current active pilots to
26 retired pilots under a voluntary deferred compensation agreement. The tariff generates

1 revenues from vessels per task performed, and how PSP members decide amongst
2 themselves to share tariff revenues subsequent to the performance of that task and the
3 payment by the vessel is not a variable in the tariff.

4 Q: Should the tariff charge a different rate for the same service based on the private, internal
5 defined benefits agreements set by the pilots of PSP?

6 A: No.

7 Q: Does anything prohibit PSP from deciding to fully fund or partially fund its internal
8 retirement plan obligations?

9 A: Nothing other than the state and federal laws governing retirement plans and pensions.

10 Q: Does the current tariff include a specific funding provision or formula based on the
11 existence of, provision of, or payment of benefits of the Amended PSP Retirement
12 Program?

13 A: No.

14 Q: Does the PSP proposed tariff include a specific funding provision or formula based on
15 the existence of, provision of, or payment of benefits of the PSP Retirement Program?

16 A: No.

17 Q: Does the lack of specific provision of funding or a formula based on the existence of,
18 provision of, or payment of benefits of the PSP Retirement Program in any way, shape,
19 or form limit the members of PSP from maintaining their own deferred compensation,
20 benefits, or retirement programs?

21 A: No.

22 **B. PSP and Individual Pilot Members Are Completely and Exclusively in Control of**
23 **Their Own Private Pilot Retirement and Deferred Compensation Programs and**
24 **Satisfaction of Liabilities for those Programs and Retirements**

24 Q: Who are the participants in the PSP Retirement Program?

25 A: Active and retired PSP Pilots or their surviving spouses.

26 Q: Who has voting rights in the PSP Retirement Program?

1 A: Active and retired PSP Pilots.

2 Q: Who established the PSP Retirement Program?

3 A: PSP created the current Retirement in 1982 and PSP has subsequently amended the plan.

4 Q: Has PMSA or any other industry group ever been a signatory to the PSP Retirement
5 Program?

6 A: No.

7 Q: Has PMSA or any other industry group ever been a beneficiary of the PSP Retirement
8 Program?

9 A: No.

10 Q: Has PMSA or any other industry group ever been a participant in the PSP Retirement
11 Program?

12 A: No.

13 Q: Has PMSA or any other industry group ever been vested with a right to vote on the terms
14 of the PSP Retirement Program?

15 A: No.

16 Q: Has PMSA or any other industry group ever signed a contract with PSP committing to
17 fund any specific expenses of pilots?

18 A: No.

19 Q: Has PMSA ever signed a contract with PSP committing PMSA or its members to fund,
20 assume liability for, or guarantee funding of pilot deferred compensation or pilot
21 retirement benefits administered by PSP?

22 A: No.

23 Q: Does PMSA have the authority or ability to commit members and other vessel
24 owners/operators to pay for charges which are extra-legal or beyond the tariff as
25 established by the State of Washington?

26 A: No. Vessels are required to pay, and PSP is required to charge, the full tariff costs as

1 established by the state for pilotage services - not one penny more or one penny less.
2 RCW 88.16.120. Every vessel must pay in full at the time of service, allowing for
3 invoice and payment processing, and no private industry association has any authority to
4 assert differently. Neither the pilots, or their representative PSP, nor the vessels, or their
5 representatives, have any authority or ability to commit vessels to being liable for any
6 charges for any pilotage service which are not included within the four corners of the
7 tariff which is in place and applicable at the time that the pilotage service is provided.

8 Q: Are there any rules that you are aware of that would prohibit PSP from partially funding
9 their own deferred compensation benefits from current pilotage revenues?

10 A: No, none at all. If there are any restrictions on the PSP's internal funding or non-funding
11 decisions, they are entirely imposed on the pilots by their own collective actions
12 themselves under their PSP By-laws or PSP Retirement Program contract.

13 Q: To the best of your understanding, are individual pilot members of PSP eligible as
14 independent contractors also allowed under state and federal laws to establish individual
15 SEP IRA plans?

16 A: Yes, state and federal law allow self-employed and independent private contractors to
17 participate in a SEP IRA program. The SEP IRA retirement funding vehicle was set up
18 by the federal government specifically for the self-employed and independent contractors
19 who are not employees.

20 Q: What is the incentive for PSP member pilots to participate in a SEP IRA program?

21 A: PSP member pilots would establish and participate in SEP IRA plans to take advantage
22 of their associated tax savings and high contribution levels. These plans have the highest
23 tax-free contribution limits and are strongly recommended by financial advisors for those
24 individuals that qualify, and those contributions can be invested to grow significantly tax
25 free. If pilots collectively are taking advantage of these tax-free contribution limits, they
26 would be allowed to make individual contributions totaling up to nearly \$3 million per

1 year to their SEP IRA plans.

2 Q: To the best of your knowledge, do PSP member pilots participate in SEP IRA plans?

3 A: Yes, while I have no direct evidence of the participation of any specific PSP member
4 pilots in SEP IRA plans, this participation has been confirmed in numerous conversations
5 in public and private settings regarding retirement, and given the size of pilots' annual
6 income it would frankly be surprising to me if they all were not taking advantage of the
7 SEP IRA benefit in order to minimize their tax liabilities while providing a significant
8 retirement benefit.

9 Q: Are there other retirement benefits beyond the PSP Retirement Plan and SEP IRA that
10 individual pilots participate in?

11 A: Pilot contributions to social security are also derived from pilot tariff revenues, as
12 required by federal law. Obviously, those benefits and payments are dependent upon
13 individual situations.

14 Q: Are there any other retirement benefits that are available to PSP pilots in addition to the
15 PSP Retirement Plan, SEP IRA, and Social Security?

16 A: Yes, most pilots have had a substantial career elsewhere in the maritime community prior
17 to joining PSP. See Section VI. As employees of the companies or entities that
18 previously employed them, for instance as masters in the Washington State Ferry system,
19 most pilots would have earned some specific form of retirement benefit prior to their
20 career as a PSP pilot. Of course, these benefits and payments are dependent on individual
21 situations and unknown to PMSA and earned outside of their piloting career and without
22 any revenues generated by the tariff.

23 Q: In addition to the PSP Retirement Plan, SEP IRA, Social Security, and any previously
24 earned retirement or pension benefits from a pre-PSP employment, are there any other
25 retirement benefits that are paid to a PSP pilot?

26 A: Yes, under the PSP By-laws pilots are equity participants in PSP as each individual

1 licensee is required to “buy in” to the PSP partnership structure. This equity participation
2 in PSP of each individual pilot is then “bought out” and paid out over several years as a
3 long-term capital gain on their investment in the PSP business when that pilot retires.

4 Q: So, the current PSP system facilitates pilot retirement benefits from at least 5 separate
5 sources?

6 A: Yes, PSP pilots are likely eligible to receive at least 5 retirement payments, including
7 from 1) the PSP Retirement Program, 2) the pilot’s SEP IRA, 3) Social Security, 4) the
8 retirement program from a pilot’s pre-PSP career employer, and 5) the PSP equity “buy
9 out” requirement upon retirement.

10 **C. PSP Cannot Transfer Its Internal Obligations for Pilot Retirement Programs to the**
11 **State**

12 Q: Is the State of Washington funding or obligated to fund the private PSP Retirement
13 Program?

14 A: No, the Legislature has specifically and explicitly taken steps to preclude the state from
15 taking any liability for the private obligations regarding retirement entered into by PSP.
16 Pursuant to RCW 81.116.020, while the UTC “may consider pilot retirement expenses”
17 as an element of the tariff, which includes consideration of funded SEP IRA plans “under
18 no circumstances shall the state be obligated to fund or pay for any portion of retirement
19 payments for pilots or retired pilots.”

20 Q: Are there any protections in law for the beneficiaries of an existing private PSP
21 Retirement Plan?

22 A: Yes, the Legislature has specifically taken steps to ensure that if PSP presents the costs
23 of a retirement plan to the state at the time a tariff is adopted as a basis for setting the rate
24 then it must distribute benefits according to that plan. RCW 88.16.055.

25 Q: Does that rule make the state responsible for reimbursing the specific costs of a pilot
26 retirement plan in a tariff?

1 A: No, this statute only ties the hands of the active pilot members of PSP, not the State.

2 Q: Is there any rule that says the tariff must be adjusted to address the specific costs of a
3 pilot retirement plan?

4 A: No, and in fact, in years of tariff reductions, tariff freezes and non-adjustments in the
5 tariff there was no increase in the tariff to address specific and escalating costs of the
6 pilot retirement plan. There were 8 years since 2008 when the tariff was not increased.
7 [Exh. MM-5]. Yet, despite this, payments from pilot incomes were paid out to retirees
8 without any correction or action taken to arrest these payments by PSP.

9 Q: Is there any indication that the PSP Retirement Program should be treated as a public
10 retirement plan?

11 A: No, if this were a public retirement plan then it would be governed by public rules and
12 administered and overseen by the Washington State Department of Retirement Systems,
13 meetings regarding administration of the plan would be given through public notice, the
14 public would be allowed to comment on the administration of the plan, all records
15 regarding the plan would be subject to regular public scrutiny, and funding requirements
16 and accounting obligations applicable to public plans would need to be followed. None
17 of those conditions exist here.

18 Q: Is there any publicly-approved, publicly-controlled, or publicly-audited fund into which
19 contributions which “fund” the PSP Retirement Program could be deposited?

20 A: No.

21 **IX. PSP’S PROBLEMATIC TREATMENT OF EXPENSES, COMPENSATION, AND**
22 **INCOME ADJUSTMENTS**

23 **A. Essential versus Non-Essential Expenses**

24 Q: Does PMSA agree with PSP that all operating expenses as reported in their financials are
25 essential to the provision of PSP’s monopoly pilotage service?

26 A: No. Regular essential expenses such as boat fuel, billing, and dispatching, which are

1 components of providing the services to vessels covered by the tariff, are not the same as
2 non-essential expenses extraneous to the provision of pilotage services to vessels.

3 Ratepayers should not be paying for the lobbying, political contributions, dues, license
4 fees, conferences, or entertainment, consulting, and marketing efforts by a monopoly to
5 perpetuate their monopoly over and above the actual costs of service. Reasonable
6 consulting tied to essential services like pilot boat or computer issues is an exception but
7 consulting to get more tariff is not in the same category.

8 Q: Should PSP be engaging in activities as if it were the pilots' employer?

9 A: No, PSP is an unincorporated association which was primarily formed to facilitate the
10 provision of shared overhead of its member pilots, who are all independent contractors.
11 Only those expenses which are necessarily shared overhead for all pilots, and not the
12 personal expenses of an individual pilot or pilot corporation, are essential expenses.

13 Q: Provide an example of an expense that is non-essential for PSP because the expense is
14 not a component of vessel service and PSP is not a pilot employer.

15 A: PSP has chosen to involve itself in the business of obtaining individual medical insurance
16 coverage for pilots, which because it is not part of the provision of services to vessels,
17 was a private business expense traditionally left to each independent contractor pilot or
18 pilot corporation. In 2018, this was a \$1.5 million dollar expense for PSP. Exh. JN-04,
19 pg. 28.

20 Q: Are there any other expenses which PMSA objects to as non-essential?

21 A: Yes, the payment of "Former director retirement" of nearly \$70,000 per year for an
22 individual who is no longer a PSP employee. Compensation for the work completed by
23 this individual should have been made during the term of his employment when it may
24 have benefitted vessels and provided services to current pilots. However, a retired
25 employee is, by definition, no longer providing any benefit or service to vessels.

26 Moreover, when this individual was an employee, PSP should have provided for the

1 funding of future liabilities of his retirement. For example, the 2018 PSP Financials
2 indicate that the current Executive Director has a 401(k) and PSP paid payroll taxes to
3 cover her social security obligations. If PSP did not previously provide these benefits for
4 the prior Executive Director at the time of his employment, the payment for such a
5 benefit now should come out of PSP's pocket, not out of current vessel tariff revenues.

6 Q: Provide a description of which PSP expense categories you consider essential and subject
7 to reasonable recovery through a tariff.

8 A: Categories that we would categorize as essential are those that are "Direct Operating
9 Expenses," this includes most operating expenses in the Seattle office actually essential
10 to the delivery of the pilotage service, some of which may be direct or discretionary, all
11 current expense categories at the Port Angeles Station, and all Pilot Boat operations
12 expenses. For a list in more detail, please see attached a summary of PMSA-proposed
13 "Puget Sound Pilots Expense Categories." [Exh. MM-36]

14 Q: What PSP expense categories may be considered non-essential or properly categorized as
15 a distribution of revenue, benefits, or compensation to pilots?

16 A: Categories that we would characterize as non-essential are labeled "Discretionary
17 Association Expenses" attached PMSA-proposed "Puget Sound Pilots Expense
18 Categories." [Exh. MM-36] In this proposal we include several categories as both
19 essential and non-essential, such as conferences or attorneys' fees, as they may be direct
20 or discretionary depending on the nature of the expense. With respect to "expenses" that
21 are actually payments to PSP pilots, including all benefits and payments, these should not
22 be treated as direct operating expenses to PSP; they are distributions of income (see
23 subsection B, below).

24 **B. PSP Financials Do Not Include the Value of Pilot Benefits and Deferred**
25 **Compensation and Equity Payouts in Computation of Average Net Income of Pilots**

26 Q: Do PSP's financial documents capture actual total compensation of pilots?

1 A: Absolutely not. The reported Average Net Income of pilots is reported as \$402,219 for
2 2018, labeled either “Annual earnings after deductions” or “Balance of Pilotage Revenue
3 Pooled Per Pilot” (Exh. JN-04, pg. 22-26). This per pilot Average is based on the
4 reported “Net Income from Pooled Operations” revenue of \$20,490,266 (Exh. JN-04, pg.
5 7). But the reported \$402,219 average Net Income is an unclear and potentially
6 misleading statement which understates actual compensation to pilots.

7 Q: What are some examples of how pilot compensation exceeds the reported Net Income?

8 A: Various items listed as “Expenses” in the PSP Financials are actually payments from PSP
9 to pilots as compensation, yet they are not included in per pilot income. For example, in
10 2018, \$1,036,161 in Transportation Fees were listed as “paid directly to pilots” as well as
11 Individual Business Expenses, but both are included above the line as “Expense – other”
12 (Line 8) and deducted from Revenues prior to the “Balance of Pilotage Revenue Pooled”
13 (Line 9). Exh. JN-04, pg. 22. While both of these are distributions of tariff revenues to
14 pilots, and are not association expenses, the PSP Financials include these in their
15 “Expense” category and not as part of the distribution of income to pilots.

16 Q: Has PSP confirmed that Individual Business Expense and Transportation payments are
17 payments to pilots as reimbursement for out of pocket expenses?

18 A: Yes. PSP has confirmed that “IBE are expenses paid personally by pilots – not paid to
19 individual pilots by PSP” and that Transportation is paid to pilots that “incur personally
20 the travel expenses for those jobs.” (PSP Response to PMSA DR 317) The transportation
21 payments are confirmed as paid to pilots after the “Pool Share Less Operating Expense
22 Share,” thus not a part of PSP expenses and rightfully included in the accounting for Net
23 Income to pilots. (PSP Response to PMSA DR 332)

24 Q: What would the proper Average Net Income be reported as in 2018 if you included these
25 “expenses” as distributions of tariff revenues to pilots as income?

26 A: \$427, 961. The 2018 BPC Annual Report, pg. 30 [Exh. JR-5] correctly moved these

1 payments to pilots below the Expenses line, and explained that these are not Association
2 expenses, but rather payments to individual pilots in Note 3. While it does not address it
3 as such, the BPC Annual Report recalculates actual average Net Income per pilot for
4 2018 upwards to \$427,961.

5 Q: Are there other examples of pilot compensation exceeding the reported Net Income but
6 not being listed in the PSP Financials as income or compensation to pilots?

7 A: Yes, the computation of pilot income in the PSP Financials does not include payments
8 made in the form of benefits or deferred compensation. There is no recognition in the
9 2018 PSP Financials of the compensation value to pilots of the benefits associated with
10 the \$1,560,772 payment for “Medical insurance – pilots” or of the present value of the
11 deferred compensation of “Puget Sound retirement” payment of \$4,626,971. Exh. JN-04,
12 pg. 28. At 60% of the overall claim of \$10.2 million in this category, these two items of
13 pilot benefits and compensation alone far and away represent the two largest expense
14 items listed in the current claim for “Seattle Office Operating Expenses.” Yet, there is no
15 consideration of these in the financials as providing compensation value to pilots as
16 income.

17 Q: Are there any other pilot income variables which are accounted for outside of the
18 reported average Net Income of \$402,219?

19 A: Yes, “Note 10 – Unrecorded Liabilities” of the PSP Financials makes mention of the PSP
20 buyout, though this is not identified as a compensation item for pilots elsewhere in the
21 summation of pilot income or compensation levels. Exh. JN-04, pg. 19. The 2018
22 financials are unequivocal that pilots are “being paid out as of December 31, 2018” in the
23 aggregate amount of \$3,736,439. The 2018 annualized value of this payout to pilots is
24 listed as an additional \$246,363 in “payments to pilots” (Exh. JN-04, pg. 7)(Lines 12-
25 13), but this income is not included in the Average Net Income computation to pilots.

26 Q: Do the PSP Financials estimate the value of the deferred compensation to pilots of the

1 PSP Retirement Program?

2 A: No. “An estimate of the unfunded retirement program liability as of December 31, 2018
3 and 2017, has not been determined.” Exh. JN-04, pg. 16.

4 Q: Has PMSA been able to confirm the actual amounts of income or payments made to PSP
5 members?

6 A: No. PSP did not produce individual K-1 statements in response to PMSA discovery
7 requests. (PSP Response to PMSA DR 16).

8 **C. PSP Is Inconsistent on of its Treatment of Deferred Compensation and Internal**
9 **Deferred Payments**

10 Q: Is PSP consistent in its treatment of office expenses and benefits and deferred
11 compensation?

12 A: No, and these inconsistencies are confusing when talking about office expenses and
13 overhead. Medical insurance benefits for current pilots as well as retirement payments to
14 former and not-currently serving pilots, are included in the \$10.2 million “Seattle Office
15 Operating Expense” category. (Exh. JN-04, pg. 22) But benefits paid to pilots are neither
16 an “Operating Expense” nor are they an “office expense.” Just as other cost categories
17 are in the PSP Financials, these benefits should be clearly segregated as pilot benefits and
18 deferred compensation and should not be presented as part of the overhead of running a
19 specific office location.

20 Q: Has PSP historically treated deferred compensation payments as part of the “Seattle
21 Office Operating Expense” category?

22 A: Yes and no. These types of expenses have been included and removed from the “Seattle
23 Office Operating Expense” category, back and forth, over time by PSP. [Exh. JR-32] As
24 illustrated in the BPC-created “Puget Sound Pilots - Income & Expense Line Item
25 Comparison of Audited Financials” summary spreadsheets, prior to 2011 there was no
26 provision for “comp day” payments in PSP expenses, and the BPC spreadsheet notes that

1 these were “prev[iously] paid as distribution to active pilot.” Then beginning in 2011,
 2 PSP started to include payments for comp days in the “Seattle Office Operating
 3 Expense.” This occurred through 2015. Then PSP chose to remove these payments from
 4 the Seattle Office payment line altogether.

5 *Figure II. Income & Expense Line Item Comparison of Audited Financials (2011-2017)*

Puget Sound Pilots - Income & Expense Line Item Comparison of Audited Financials											
THE DPC makes no representations regarding the correctness of the data on these pages or the validity and/or relevance of how the data are presented. The Board staff has attempted to present the data in a format that provides a mechanism for analysis in a manner requested by some Board members.											
% Δ	1/1/2017	1/1/2016	2015	1/1/2014	@ 1/1/2013	1/1/12	no Tariff				
2017/2016	+0%	+0%	3/1/15 Rev Neutral 7/1/15 ~+ 2%	+0%	+3%	+0%	change (18 mo tariff)	+3%	7/1/10	4% 7/1/08 0% 7/1/09	
	12/31/2017	12/31/2016	12/31/2015	12/31/2014	12/31/2013	12/31/2012	12/31/2011	12/31/2010	12/31/2009		
19	SEATTLE - expenses										
20	Attorney fees	27.5%	\$ 95,458	\$ 74,855	\$ 51,605	\$ 96,244	\$ 11,578	\$ 28,043	\$ 8,396	21,240	53,063
21	Commission - SILA		150,000								
22	Comp day expense - see Notes on f/s				163,120	407,238	760,596	603,785	290,385	<-prev paid as distribution to active pilot	
23	adjust to match 2016 & 2017				(163,120)	(407,238)	(760,596)	(603,785)	(290,385)		
24	Computer maintenance or system	12.0%	181,189	161,841	329,568	278,310	203,166	209,101	203,750	181,837	219,927
25	Computer programming	242.1%	139,579	40,804	4,862	4,466	3,541	7,041	5,531	3,479	2,936

11 Q: Is the treatment of benefits and deferred compensation expenses consistent with the PSP
 12 By-laws?

13 A: Currently, these deferred compensation items are being treated in a manner which is
 14 seemingly inconsistent with the PSP By-laws, which distinguish Benefits (Sec. 16.9)
 15 from Expenses (Sec. 16.6) with respect to how they need to be treated prior to
 16 distribution of pilot earnings.

17 **D. Administrative Overhead Is Increasing and Is Improperly Intermingled with**
 18 **Pilotage Net Income**

19 Q: What concerns does PMSA have with respect to PSP Administrative costs and overhead?

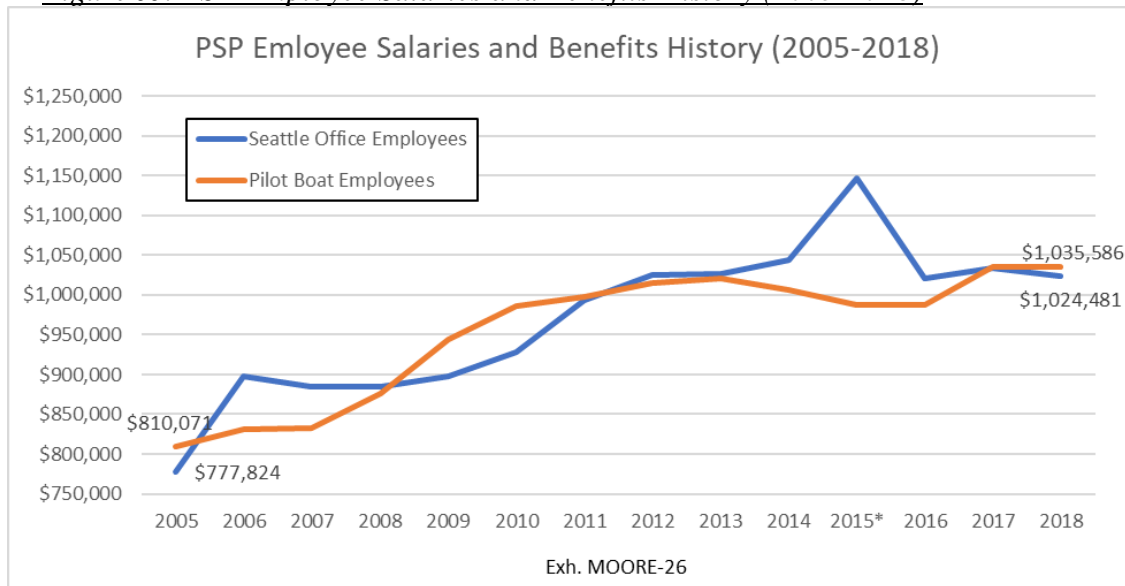
20 A: PMSA is concerned with both the size of the Administrative overhead of PSP being
 21 unreasonably large and with the structure, and accounting for, the creation of new
 22 Administrative overhead.

23 Q: What are your concerns regarding the size of Administrative overhead?

24 A: PSP’s business is not a large operation nor a complex operation. Of the 15 total
 25 employees (Exh. JN-04, pg. 31), there is one Executive Director who manages 5
 26 additional office employees, and 9 boat crew employees under the management of a Lead

1 Boat Operator. There are essentially only two managers and their work are
 2 complemented by a licensed pilot serving as PSP President, whose duties under the PSP
 3 by-laws provide for near full time administrative and office work. This level of upper
 4 management and employee structure had resulted in a relatively stable expense level
 5 have been in place for many years. [Exh. MM-26]

6 *Figure JJ. PSP Employee Salaries and Benefits History (2005-2018)*



17 Q: What do you consider as an adequate level of executive management for PSP?

18 A: A President that only infrequently pilots and an Executive Director (or Business Manager
 19 as the position used to be called) with third party contracts for things like invoicing and
 20 computer support is, has been, and should continue to be more than adequate to cover
 21 PSP's basic administrative needs. However, in this petition, PSP asserts that the Vice
 22 President job "over time has evolved into a full-time job." Exh. IC-1T

23 Q: Why does the assertion that the pilot serving as Vice President raise administrative cost
 24 questions?

25 A: This arrangement will, in effect, drive up PSP administrative costs without claiming
 26 them as expenses and the Petition is seeking to intermingle and pay for this new

1 overhead by burying it as pilot Net Income. As testified to by the PSP Vice President in
2 his testimony, he spends “a substantial amount of my time compiling and analyzing data
3 to work on our tariff design...” while collecting a full pilot share of ship provided
4 revenues. (Exh. IC-IT) For all intents and purposes it seems that PSP has created an
5 office with 3 executives, the PSP President, Vice President, and Executive Director,
6 supervising 5 people. The administrative cost of having these three managers alone is
7 approximately \$1,168,690. [Exh. MM-27]

8 Q: How else does this executive office overstaffing negatively impact the pilotage ground?

9 A: This over-staffing by the PSP executives in the office not only unnecessarily increases
10 costs to shipping it also contributes to the creation of callbacks and delays which,
11 ironically, the PSP Vice President is testifying to in an attempt to justify more tariff.
12 From the perspective of those required to use pilot services, this would be characterized
13 as an unnecessary and unfair lose/lose proposition. The Vice President might want to
14 earn a pilotage share of revenue while spending time analyzing the tariff in the office
15 instead of working on the water, but he is not a staff analyst employee of PSP, instead he
16 holds a state issued license to perform pilotage service, not full time administrative
17 service at pilot income levels. Instead of focusing on piloting, the Vice President reported
18 working on “administrative assignments” 245 times in 2019; as for time on the water, he
19 performed 20 jobs in rotation and 12 callbacks, totaling 32 vessel moves in the entire
20 year. (PSP Response to PMSA DR 78).

21 Q: Why is there concern about the proper accounting and reporting of this type of
22 administrative overhead?

23 A: Taking a pilot off of the water in order to perform administrative tasks has implications
24 for the tariff with respect to both staffing and expenses in the office. If additional
25 administrative office support is necessary, the most cost-effective option for providing
26 this support would surely be to hire an administrative executive or assistant at a wage

1 lower than that of an expensively trained mariner with a state issued pilot license. A pilot
2 should not be paid a net income of \$402,219 plus other PSP benefits and allowances to
3 spend the majority of the year sitting behind a desk.

4 With respect to impacts on piloting on the water, the Vice President himself
5 testified that through September of 2019 that there were 72 delays due to a shortage of
6 pilots (Exh. IC-1T). But during calendar year 2019 he completed a total of only 32
7 pilotage assignments. If PSP were prioritizing providing pilotage service, fatigue
8 management, and efficiency on the water, simply having the Vice President available to
9 pilot only 104 assignments in 2019 would have alone provided enough additional
10 capacity to cover those delays absent efficiency improvements to their operations. The
11 Vice President's impacts on piloting are even more concerning considering the fact that,
12 although the Vice President only averaged to get on the water to move a vessel 2.67
13 times a month, 37.5% of his jobs were callbacks.

14 **E. Self-Insurance Charges**

15 Q: Is it appropriate for PSP to ask industry to pay the pilots' \$150,000 annual share of the
16 self-insurance settlement charges?

17 A: No, and we object to this request.

18 Q: What are the Self-Insurance Charge Payments?

19 A: These are charges imposed on the BPC by the Legislature to cover state costs associated
20 with the liability attendant to a gender discrimination lawsuit. In order to pay the state
21 back and to cover the BPC in the future, self-insurance charges are being levied on pilots
22 and on vessels. These charges were divided by the Legislature and PSP for 6 years and
23 the tariff was frozen so pilots couldn't expense their portion of the state-required out-of-
24 pocket commitment and attempt to get tariff increases due to increasing these
25 "expenses". Engrossed Substitute House Bill No. 1160, Section 108 (2017). WAC 363-
26 116-301, the section implementing this surcharge, is in effect through June 30, 2021, and

1 already directs the collection of an additional surcharge for the purposes of recouping the
2 costs of the self-insurance premiums.

3 Q: Why is PMSA opposed to this proposed charge?

4 A: By attempting to pass along the PSP share of insurance charges by increasing the tariff,
5 PSP is attempting to skirt the structure of RCW and WAC directed payments. Even
6 worse, PSP is asking vessels to pay twice – once through legislatively-imposed surcharge
7 and second through a higher tariff. This is not only untenable given the specific
8 legislative restrictions on these surcharges but also because it ultimately forces vessels to
9 pick up the entirety of the cost of the liability for claims in which vessels played
10 absolutely no role whatsoever (for instance, gender discrimination in the training
11 program). Finally, if built into the tariff it will grow and compound and be used for
12 general PSP income as opposed to being responsive to a specific legal requirement set
13 out by the Legislature and administered by the BPC. We do not believe it is appropriate
14 for PSP to ultimately profit off of the gender discrimination lawsuit to the detriment of
15 ratepayers.

16 **F. Transportation Expenses**

17 Q: Are transportation expenses adequately explained and consistent?

18 A: No. PSP reported \$1,029,520 in 2017 and \$1,036,161 in 2018 which is representative of
19 charges for many years. (Exh. JN-04). For the July 1, 2018 to June 30, 2019 work period,
20 PSP's submission, which listed \$463,098 for transport to and \$465,724 for transport from
21 totaling \$928,822 (Exh. WTB-07), this is seemingly consistent with the 2017 and 2018
22 charges. However, PSP lists \$719,496 in transportation fees paid directly to pilots for the
23 twelve months ended June 30, 2019 (JN-05). And, in pro forma year 1 (Exh. WTB-03)
24 they list transportation revenue at \$1,386,408.

25 Q: Is an increase in transportation revenue consistent with other PSP projections in its
26 Petition?

1 A: No, because Transportation expenses should track actual expenses for pilots traveling to
2 and from assignments. As clearly described by PSP testimony (Exh. SK-1T), the pilots
3 are forecasting even further declines in vessel traffic as well they should. Fewer vessel
4 assignments should result in reduced traveling to and from assignments, and therefore
5 lower transportation costs, but the pro forma shows a nearly 50% increase.

6 Q: Do the Transportation expenses clearly show how charges are being assessed?

7 A: No, if testing with actual receipts lowered transportation revenue by some \$316,665 in
8 the twelve months ended June 30, 2019 that should be reflected in reduced charges in
9 addition to the need for clarifying repositioning volumes and actual costs.

10 **G. Attorneys' Fees**

11 Q: What concern does PMSA have with PSP's proposal to increase spending on attorneys'
12 fees?

13 A: The PSP Proposal significantly increases the annual Attorney Fees expenses in a manner
14 which raises questions about whether or not these services are essential to the provision
15 of a pilotage service. Historically, annual attorneys' fees have been far less than what
16 PSP plans to spend in their proposal. [Exh. MM-28]

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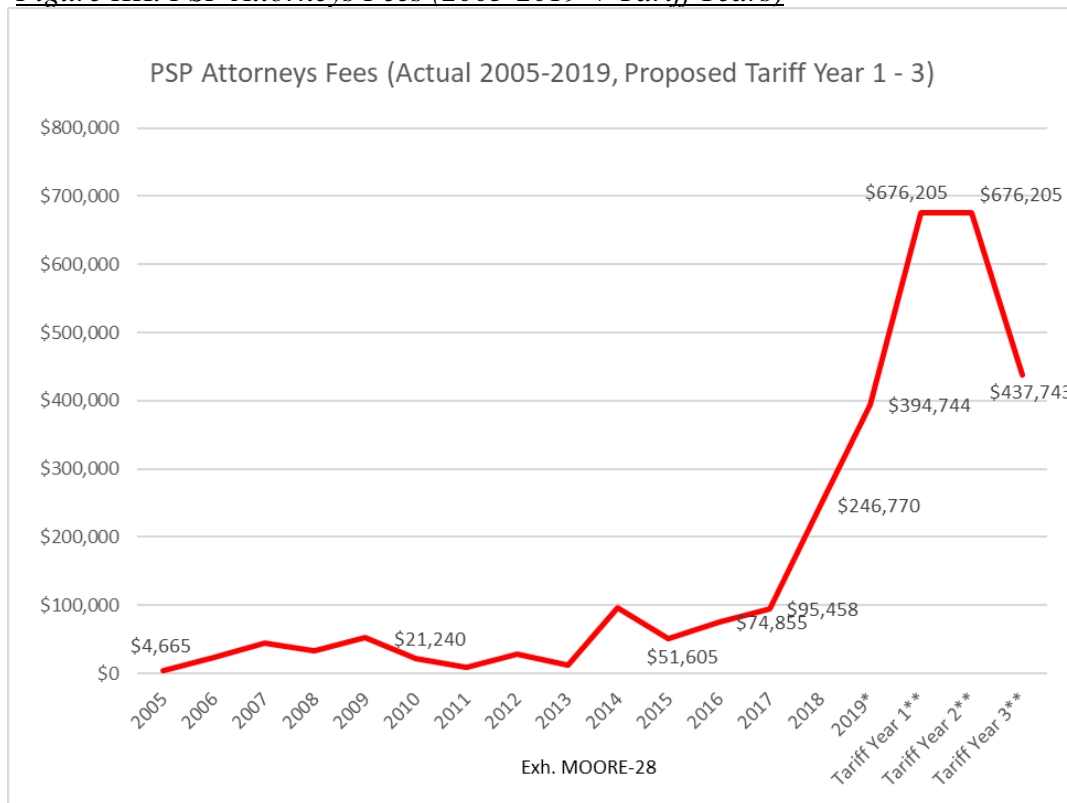
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1 Figure KK. PSP Attorneys Fees (2005-2019 + Tariff Years)



14

15 From 2005-2017, attorney fees ranged from \$4,665 per year to \$95,458 per year, with an

16 average of \$41,956. In 2018 they increased to \$246,770, which alone was an increase

17 over the historic average of 488%.

18 Q: How do these historical attorney fees compare to the PSP proposal?

19 A: PSP is asking for the tariff to cover exceptionally large attorney fees compared to its

20 historic need. While historic attorney fees through 2017 averaged \$41,956 per year, that

21 pales in comparison to the \$1,790,153 in attorney fees PSP lists in its Pro Forma. (Exh.

22 WTB-03, Exh. WTB-04, Exh. WTB-05) These are not reasonable, incremental increases.

23 PSP significantly increases attorney fees and then plans to incorporate them as a

24 permanent fixture under the tariff.

25 Q: Have you observed PSP activities which are departures from the historic practices of PSP

26 which might explain the rapid growth in attorneys' fees?

1 A: I have observed a trend towards the substitution of an attorney speaking on behalf of PSP
2 generally. This has occurred at BPC meetings over the past year where PSP is now
3 represented by counsel and its attorneys speak on their behalf instead of the President and
4 Executive Director, who also both attended these meetings, even on non-legal issues. In
5 several instances I have been surprised when the lawyer attempted to answer questions
6 about things like pilot fatigue instead of the President or Executive Director. This is not
7 an essential component of piloting service nor is it an effective use of tariff resources.
8 Substituting counsel to make non-legal arguments with the BPC instead of simply having
9 PSP executives and staff participate with respect to operational questions, as has been the
10 historic norm, should not be enshrined in the tariff.

11 **H. PSP Expense Projections Are Unjustified**

12 Q: Does PMSA have concerns about other projected levels of spending proposed in the PSP
13 Petition?

14 A: Yes, PSP expenses seem over-inflated, likely because they utilize projections based on
15 the premise that the UTC should be funding the pilotage system on the basis of 61
16 licensed pilots rather than the current number of authorized pilots. With an inflated
17 number of pilots, it would be necessary to adjust operating expenses and account for
18 extending benefits and deferred compensation to the additional (non-existent) pilots.

19 Q: Are projected benefits subject to this over-inflated projection concern?

20 A: Yes, with respect to benefits, such as medical, license fees, and disability insurance, PSP
21 projects expenses based on 61 licensees, yet there were only 51 actual licensed pilots at
22 the end of 2019. When expenses are adjusted to the actual number of pilots as opposed to
23 an aspirational number of pilots, this means less spent on medical (approximately
24 \$31,000 per year per pilot), individual pilot license fees (\$6,500 per year per pilot), and
25 individual pilot disability (approximately \$5,000 per year per pilot). PSP's total over-
26 inflation of these benefits amounts to approximately \$467,500.

1 Q: Is the projected rate of growth of operating expenses reasonable?

2 A: No, PSP estimates that their Operating Expenses will increase 12.5% in each of the first
3 two years. Given that the trend in actual operational expenses has been decreasing or flat
4 for years, and that PSP itself has projected fewer future vessels to service, there is no
5 justifiable reason to assume a 12.5% growth in operational expenses. [Exh. MM-17] If
6 applied to all expenses, this inflates expenses by \$1,500,000.

7 **X. STATE REGULATION OF PILOTS MUST ENHANCE WASHINGTON'S**
8 **COMPETITIVENESS FOR WATERBORNE COMMERCE**

9 **A. State Policy Under the Pilotage Act is to Develop and Encourage Waterborne**
10 **Commerce**

11 Q: The Legislature in RCW 88.16.005 declares that it is the “intent of the legislature not to
12 place in jeopardy Washington's position as an able competitor for waterborne commerce
13 from other ports and nations of the world, but rather to continue to develop and
14 encourage such commerce.” Should the UTC’s consideration of PSP’s Petition be made
15 in the context of this Pilotage Act policy?

16 A: Yes, while rate setting functions under the Pilotage Act have been transferred from the
17 BPC to the UTC, the State’s findings and declarations about the importance of
18 embracing the economic competitiveness goals of this regulation remained unchanged
19 and are applicable to rate setting.

20 Q: Does the Pilotage Act define “waterborne commerce”?

21 A: It does not.

22 Q: How does the Washington legislature use and apply this term in other statutory contexts?

23 A: In the taxation and regulation of port and waterfront properties, the State has made it
24 clear that waterborne commerce refers to the shipment of goods in foreign and domestic
25 commerce by water. For example, in the state Business & Operations Tax context, there
26 is a special rate conferred on stevedoring services, the business of loading and unloading

1 oceangoing vessels at a marine terminal. In so limiting taxes on the business of
2 stevedoring, the statute describes it as “activities pertinent *to the conduct of goods and*
3 *commodities in waterborne interstate or foreign commerce* are defined as all activities
4 of a labor, service or transportation nature whereby cargo may be loaded or unloaded to
5 or from vessels or barges, passing over, onto or under a wharf, pier, or similar structure.”
6 (emphasis added) RCW 82.04.260 (7). With respect to the usage of waterfront lands, the
7 state often refers to the preference for the reservation of rights for waterfront property to
8 be used for port-related activities as for the conduct of shipping goods, such as when logs
9 are prepared or stored for “shipment in waterborne commerce.” RCW 79.106.060 (10).

10 Q: Do these statutes refer to vessels’ operations in waterborne commerce or to the shipment
11 of goods via maritime operations in general?

12 A: The phrase “waterborne commerce” is very specifically used with respect to the carriage,
13 transfer, and movement of the goods in transit.

14 Q: Are there statistical resources available from the state which utilize an interpretation of
15 “waterborne commerce” to refer to the goods being moved themselves?

16 A: Yes, the JTC Transportation Resource Manual, January 2019 update, continues to refer
17 to total cargo throughput at Washington’s seaports as “waterborne commerce,” as the
18 TRM has done in prior versions. [Exh. MM-29]

19 Q: When the United States Army Corps of Engineers performs an evaluation of waterborne
20 commerce, does the US Army Corps of Engineers also measure the volumes of goods
21 shipped as a measure of waterborne commerce consistent with the JTC TRM?

22 A: Yes, when publishing data about cargo volumes, the Army Corps affirmatively describes
23 its role as capturing and reporting waterborne cargo statistics. [Exh. MM-30]

24 Q: In any of these contexts where “waterborne commerce” refers to the shipment of goods
25 via water, is the phrase used to mean the regulation of the navigation of vessels?

26 A: No.

1 Q: What then is your opinion of the most reasonable context under which the Pilotage Act
2 refers to avoiding putting Washington's ability to compete in "waterborne commerce" in
3 jeopardy?

4 A: I do not believe that the Legislature or the Board of Pilotage Commissioners, or the
5 vessel customers of pilots, or licensed pilots themselves would ever ask vessels transiting
6 the Puget Sound to improve the State's competitiveness by lowering safety standards or
7 shorting the licensing requirements of pilots. Given my belief that the State would never
8 knowingly compete for cargo by compromising safety, and the fact that waterborne
9 commerce refers to the growth of cargoes in other statutory contexts, the only place
10 whereby the Pilotage Act can be implemented so as to ensure that the tariff does not
11 become uncompetitive with respect to the state's position via discretionary cargoes is
12 with respect to maintaining a reasonable and manageable tariff.

13 **B. Washington State's Gradual Decline in North American Marketshare in the**
14 **Container Market Exposes Weaknesses in the Competitiveness of Puget Sound**
15 **Seaports**

15 Q: What does PMSA suggest is the best measure of the state of waterborne commerce in
16 Puget Sound?

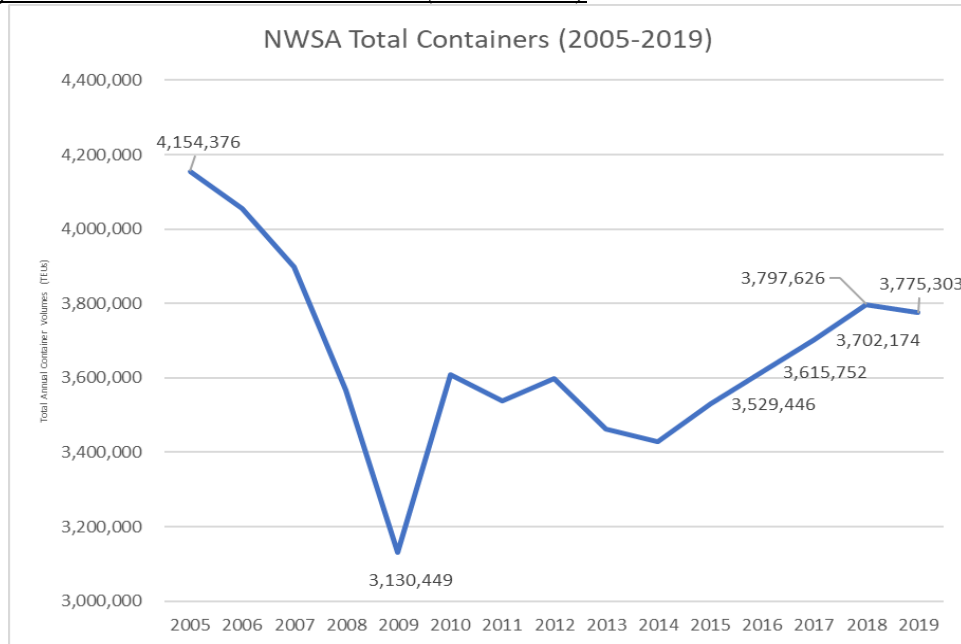
17 A: With respect to the container trades at the Northwest Seaport Alliance ports, the Ports of
18 Seattle and Tacoma, total containerized tonnage and total container volumes at the ports
19 are the best indications of a gain or loss of cargo and competitive market share.

20 Q: What is the history of the volumes of the container trades at the Northwest Seaport
21 Alliance (NWSA) ports?

22 A: The Ports of Seattle and Tacoma, now operating as the NWSA, have lost cargo since the
23 intermodal throughput peak at the ports in 2005 of 4,154,376 TEUs. At the close of 2019,
24 after 5 years of steady gains, volumes crested at 3,775,303. While the NWSA was very
25 steadily productive and growing volumes from 2014 to 2018, that growth has slowed.
26 Fifteen years later, the Ports are still below their 2015 peak by nearly -10%.

1 [Exh. MM-32]

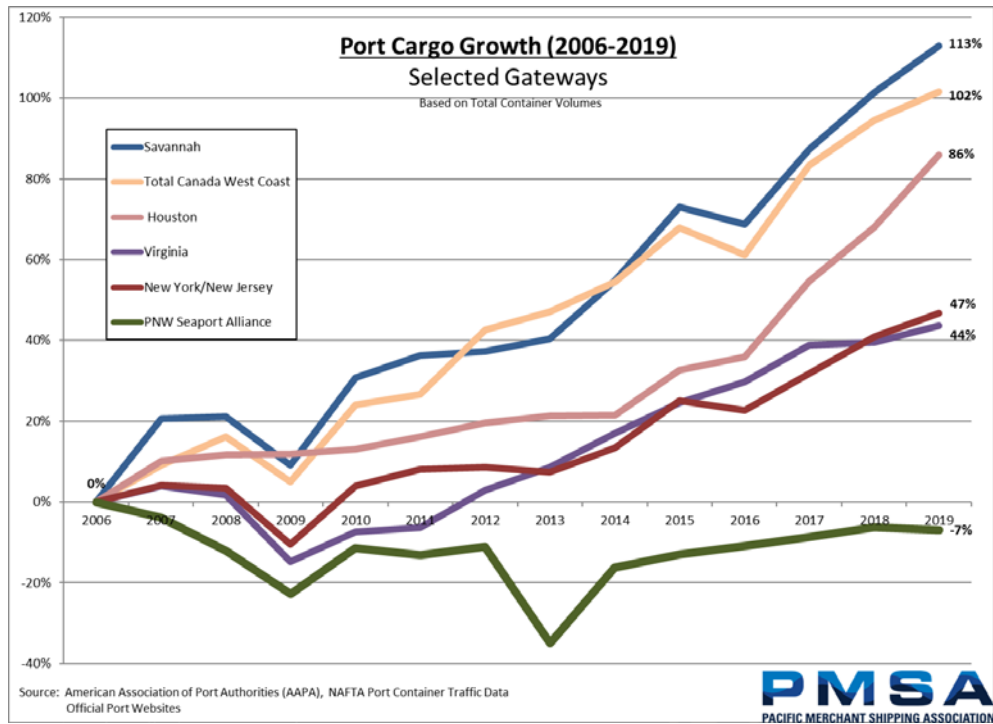
2 Figure LL. NWSA Total Containers (2005-2019)



14 Q: In light of the overall decline of container volumes at the Northwest Seaport Alliance
15 ports, how has this affected market share?

16 A: The NWSA ports have been losing marketshare to competitors for discretionary cargo.

17 Figure MM. Port Cargo Growth (2006-2019)



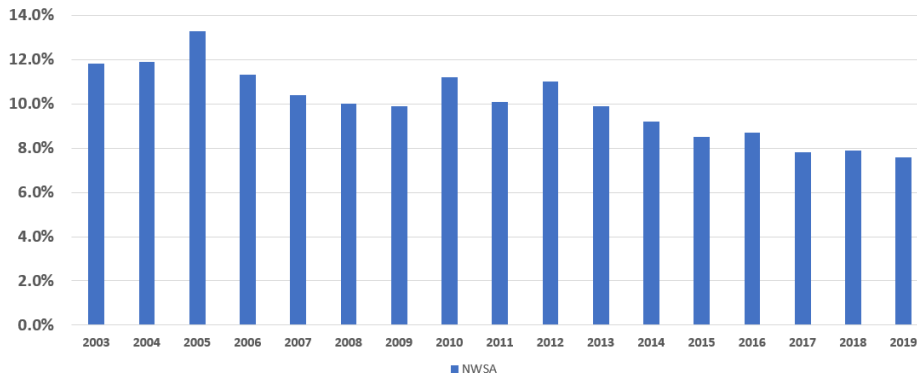
13 The overall lack of growth through the NWSA gateway since 2005 is starkly illustrated
 14 when contrasted with many other North American ports which are growing their
 15 container volumes much faster. [Exh. MM-33]

16 The NWSA Ports of Seattle and Tacoma have seen their combined overall North
 17 American market share of containerized import tonnage from East Asia decrease from
 18 11.9% in 2003 to 7.7% in 2019. [Exh. MM-33]

19
 20 Figure NN. NWSA Ports' Share of US Containerized Import Tonnage (2003-2019)

1 NWSA Ports' Share of U.S. Containerized Import Tonnage from East Asia:
2 2003-2019

Source: U.S. Commerce Department



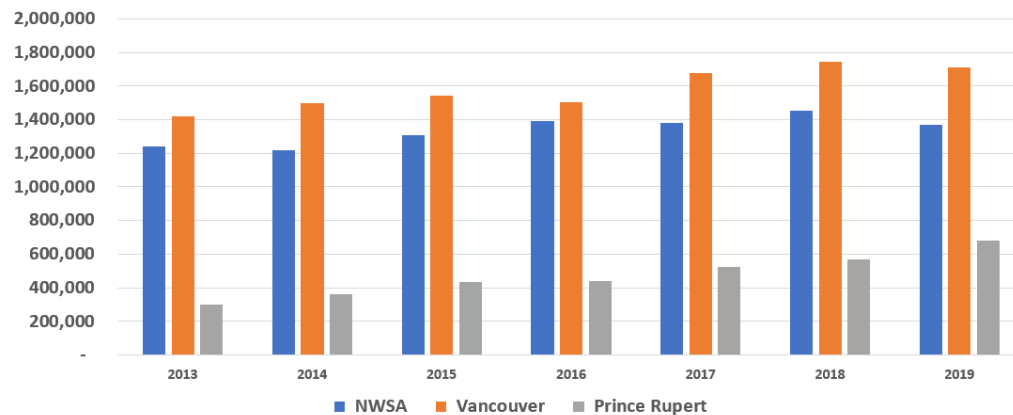
12 Q: What is the history of the market share of the ports of the Northwest Seaport Alliance
13 when compared with the container ports of British Columbia?

14 A: The loss of marketshare in the largest trans-Pacific trade lane, East Asia to North
15 America is a primary reflection of the lower overall volumes at Puget Sound ports. The
16 biggest competitor for Puget Sound cargoes are the British Columbia ports of Vancouver
17 and Prince Rupert. [Exh. MM-33]

1 Figure OO. NWSA Ports vs. British Columbia Ports, Loaded Import TEUs

2 **NWSA Ports vs. British Columbia Ports Loaded Import TEUs**

3 Source: Individual Port Websites



11 Q: What do the relatively slow and flat growth in volumes in container volumes since 2005
12 as well as declining marketshare indicate to you?

13 A: That the ports in the Puget Sound are losing cargo volumes to competitors and that the
14 State of Washington needs to keep fighting to keep its existing container volumes and
15 marketshare by improving efficiency, reliability and cost-effective gateway operations.

16 **C. The Seaports of Puget Sound Have Made It Clear That They Are Sensitive to
17 Excessive Costs of Pilotage**

18 Q: Have the Ports in the Puget Sound recently provided communications to the Board of
19 Pilotage Commissioners that confirm that they are sensitive to the cost of pilotage with
20 respect to the state's competitiveness position?

21 A: Yes, the Ports have informed the BPC that they are competing for cargo and that they are
22 sensitive to the cost of pilotage. The latest such communication from the CEO was
23 provided by letter to the BPC during the rate setting process in 2016 by the Northwest
24 Seaport Alliance. The NWSA made it clear that in its opinion "[p]ilotage costs, while not
25 the most expensive element of the supply chain, are a significant part of port call costs
26 which continue to be a point of concern to the NWSA and to our customers. ... it is
alarming to us and to our customers that at this time when pilotage revenues are at record

1 levels, rate increases are being contemplated and that increases of as much as 7% are
2 under consideration. When bigger ships call our region, revenue per pilot assignment will
3 climb. Future tariff decreases may be in order. We strongly believe tariff increases
4 should only be made when necessary to ensure continued safe pilotage ... I urge you to
5 make no increase in tariff rates and to soon after explore and implement ways to
6 fundamentally change the basis by which rate adjustments are proposed and considered.”
7 [Exh. MM-34]

8 Q: Were these comments made with respect to the rates imposed under the current tariff?

9 A: Yes, moreover, this letter was written with respect to a request to the current tariff of 7%,
10 the current PSP Petition is for a much larger increase, and before revenue per assignment
11 grew even higher to current levels.

12 Q: Are there other examples of Port testimony provided to the BPC?

13 A: In testimony made during the BPC rate setting hearing in 2013, representatives of the
14 Port of Seattle and Port of Tacoma testified together to oppose a proposed rate increase,
15 and stated:

16 “We appeal to this Board to restore the connection between the reasonable costs of
17 pilotage services and the fees charged for those services. We ask that you seek to
18 improve, not diminish, the level of transparency relative to these costs. And we
19 particularly view these issues as important in light of the fact that there is no competition
20 for pilotage services within Puget Sound. We believe there is sufficient revenue being
21 generated for safe and reliable pilotage and that any cost increases would further impact
22 the competitive position of our region. For these reasons, we ask you to adopt our
23 proposal which consists of no tariff increase, no variable expense category, and a cap on
24 tonnage and length overall assessments for vessels greater than 1,100 feet length overall,
25 and 110,000 tons.” [PMSA_000668 to PMSA_000672 (PMSA Response to PSP DR 75)]

26 Q: Have ports in the Puget Sound competed with other ports by identifying themselves as

1 low fee or no fee ports?

2 A: Yes, most notably in a campaign in trade publications, the Port of Seattle proclaimed
3 itself “fee free” in an effort to grow market share in 2009. [Exh. MM-35]

4 **D. Relative to Seaport Revenues, Pilotage Is Not An “Infinitesimal” Supply Chain Cost**

5 Q: Is the cost of pilotage an “infinitesimal” supply chain cost in the Puget Sound?

6 A: Absolutely not.

7 Q: What is the total cost of pilotage in the Puget Sound?

8 A: Annual total pilotage revenues in 2019 were \$33,691,940 under the current tariff, but if
9 one steps back and looks at PSP revenues over the past 10 years, in the decade from
10 2010-2019, pilotage costs for vessel customers have totaled \$324,438,279. [Exh. MM-4]
11 I would respectfully submit that any entity which can raise revenues of nearly 1/3 of a
12 billion dollars, regardless of where they sit in the intermodal supply chain, is not
13 “infinitesimal.”

14 Q: How does this total cost of pilotage relate to other publicly-known and publicly-imposed
15 supply chain costs?

16 A: Annual total seaport revenues from all of the public port authorities in the Puget Sound in
17 2018 were \$229,800,000. [Exh. MM-39]. When the total revenues of all Puget Sound
18 pilotage costs in 2018 of \$33,996,994 are compared to total seaport revenues, pilotage
19 represents an additional 14.79% of the total revenues earned from all of the commercial
20 seaport operations at all of the public ports in the Puget Sound for an entire year. An
21 almost 15% share over and above the revenue generated to pay for the actual
22 infrastructure needed to move the cargo carried by the vessels being serviced is not
23 “infinitesimal.”

24 Q: Why is this relevant to the Pilotage Act?

25 A: Most port seaport revenues are tied to volumetric leases, so they represent the health and
26 strength of total throughput of waterborne commerce. These are precisely the types of

1 policy considerations that should be viewed through the lens of the state policy
2 enunciated in the Pilotage Act, to protect and enhance state commerce.

3 **E. The Relative Costs of Pilotage to Port Operations in the Puget Sound Are**
4 **Significantly Higher Than When Compared to Other West Coast Competitor Ports**

5 Q: Based on the overall position of the ports of the Puget Sound compared to other west
6 coast ports, does Puget Sound's relative pilotage burden seem "infinitesimal" to its
7 competitors?

8 A: No, to the extent that competitors are taking advantage of the cost structure of pilotage
9 that impacts the ports in the Puget Sound, tariff increases put Washington State ports at a
10 competitive disadvantage.

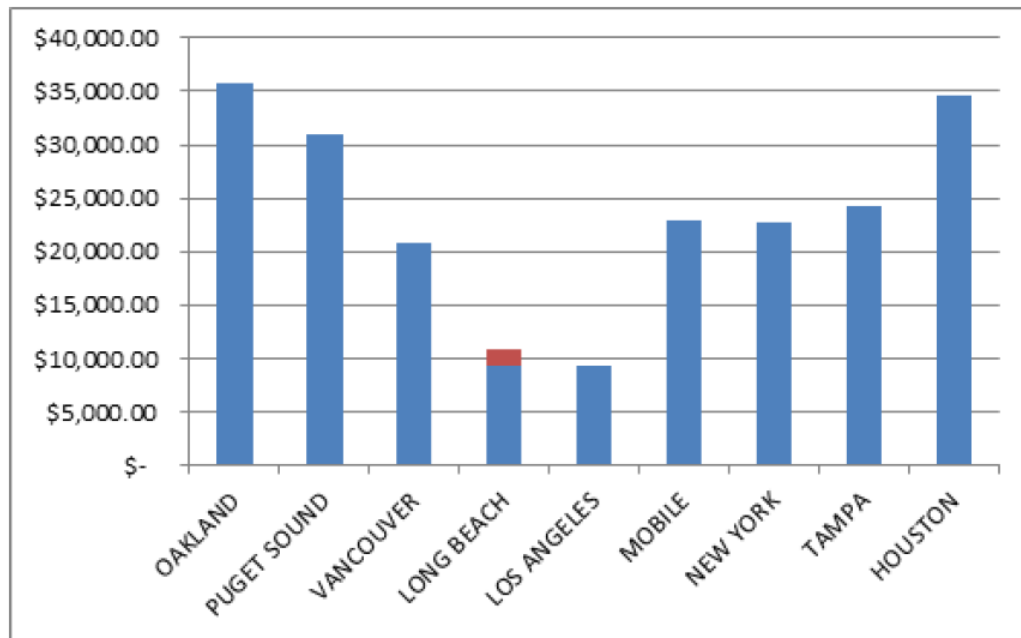
11 Q: Are other West Coast ports identifying the relatively high costs of pilotage in the Puget
12 Sound when compared to their own operations?

13 A: Yes, most recently in the Port of Long Beach, when it decided to raise its pilotage tariff
14 in 2019. The Port of Long Beach staff report specifically considered the potential of
15 pilotage costs to impact its competitive position when considering the increase:
16 "Jacobsen's pilotage rates are substantially lower than any prominent port in the U.S.
17 (except POLA) and despite the proposed pilotage rate increase, POLB would remain in a
18 competitive position.

19 ...

20 Jacobsen surveyed current pilotage rates for a 13,000-TEU vessel at a sample of major
21 North American ports, including Long Beach, Houston, Los Angeles, Mobile, New
22 York, Oakland, Puget Sound, Tampa, and Vancouver. With the exception of Port of Los
23 Angeles (POLA), Jacobsen's pilotage rates continue to one of the lowest in the nation as
24 illustrated in the graph below. (Note the red identifies the proposed Pilotage rate
25 increase.)"

1 Figure PP. Port of Long Beach Pilot Comparison



12

13 Justification for the Port of Long Beach’s rate increase included evaluation of the

14 positions of the Ports of Long Beach and Los Angeles to its competitors for

15 containerized cargo. Long Beach compared very favorably when compared to Puget

16 Sound, which was identified by the Port of Long Beach staff analysis as among the most

17 expensive ports when compared with other competitors for containerized cargoes. [Exh.

18 MM-38]

19 **XI. WATERWAY TASK COMPARISONS SHOULD BE LIMITED TO NAVIGATION**

20 **BY SIMILAR LICENSEES ON WASHINGTON STATE WATERS**

21 **A. Comparable Pilotage Tasks in Washington Waterways**

22 Q: How would you compare the pilotage responsibilities of all master mariners operating in

23 Washington State waters with federal or state pilotage endorsements?

24 A: The responsibilities of all federally licensed pilots operating on the Puget Sound are very

25 comparable to those of state licensed pilots, with one caveat, when a pilot operating

26 under their federal license is also serving as a vessel master that individual has ultimate

1 responsibilities for the safe operation of the vessel, its crew, its passengers, and cargo,
2 which are responsibilities well beyond the role of acting only as a pilot . The process of
3 granting federal pilotage endorsements to master mariners, and the training and
4 background necessary for the acquisition of federal pilotage endorsements, are very
5 similar and in many cases identical to portions of the training process for the acquisition
6 of a pilot’s license from the state of Washington.’

7 Q: Can you provide an example of the ways in which recipients of federal pilot licenses
8 must be trained in ways which are similar or identical to training for a state pilot license?

9 A: All masters and mates go through training evolutions and required experience in order to
10 obtain their licenses and upgrades, This typically involves radar courses, simulator
11 training, rules of the road testing in addition to other types of training including how to
12 respond to on board emergencies and training for specific equipment and controls on the
13 bridge. In addition, pilotage endorsements all require drawing charts from memory to
14 demonstrate local knowledge.

15 Q: Have you reviewed the testimony of Capt. Scott Coleman at Exh. SC-1T-1 to SC-1T-16?

16 A: Yes.

17 Q: Is much of what is described here similar or identical to the training for a state pilot
18 license that is described in the testimony of Capt. Coleman?

19 A: Yes, and now that potential applicants to be a trainee in the PSP training program are not
20 required to have federal pilotage endorsements prior to becoming a candidate for a state
21 license the requirements are not only very similar or identical, they are very much
22 intertwined.

23 Q: Do you agree with the testimony of Capt. Coleman at SC-1T-7 that “[i]f the goal is to
24 become a state pilot for the Puget Sound, the candidate is required to obtain an ‘All Puget
25 Sound and Connecting Waters Endorsement,’” and that to achieve that endorsement
26 requires meeting US Coast Guard training standards and requirements?

1 A: Yes.

2 Q: Please provide a description of the authorities and duties of a federally licensed pilot
3 sailing under a federal endorsement.

4 A: Pilots or masters serving as a pilot all serve the same role as far as piloting is concerned
5 which is essentially ensuring a safe transit regardless of whether they are sailing under a
6 state or federal license: the licensed pilot uses their experience and local knowledge to
7 help navigate a vessel into and out of port safely or between berths and/or anchorage
8 grounds. Of course, the master acting as pilot still has all the responsibilities of a master
9 and so has duties beyond the pilot advisory role. One key difference between the licenses
10 with respect to pilotage are not the type of job or service provided, but rather the
11 different pilotage governance structures and different requirements for a license. For
12 example, the state does not regulate WSF's masters like they do state licensed pilots as
13 that jurisdiction remains with the US Coast Guard.

14 Q: Do federal and state pilots both provide the same services to the same vessels?

15 A: Yes, the pattern of whether a vessel is piloted by a federal or state pilot is not necessarily
16 dependent on the type of vessel or flag of vessel in every port, instead it rests on the
17 decision of whether or not a state has asserted jurisdiction over that licensing function
18 and against which vessels. Here on the west coast, our member vessels call on multiple
19 ports, including the busiest ports in the country, like the Ports of Los Angeles and Long
20 Beach, but also other smaller harbors such as Port Hueneme and the Port of San Diego,
21 all of which have pilots which are operating under federal pilotage grounds. That same
22 ship as it transits up the coast may then also call on harbors that are state pilotage
23 grounds like in San Francisco, the Columbia River, or in the Puget Sound. Pilots
24 providing service in federal pilotage grounds like Long Beach must still hold a proper
25 license with the appropriate federal pilotage endorsements for their waters. In these
26 federal pilotage grounds pilots are held accountable directly by the US Coast Guard as

1 the pilots in those harbors are acting under the sole authority of the pilotage
2 endorsements on their federal licenses. This federal endorsement requirement is also true
3 for vessels on a coastwise voyage where the master can serve as the pilot in state waters
4 if he or she holds the federal pilotage endorsement for those waters, then such an ocean-
5 going vessel is not required to take a state licensed pilot, but will still have a licensed
6 pilot on board and conducting that work.

7 Q: What differences exist in the Puget Sound between masters serving vessels as state
8 licensed pilots and ferry and other vessel masters serving as federal pilots?

9 A: Puget Sound pilots must both obtain federal pilotage endorsements along with a state
10 license, but these endorsements are all in place to serve the same role - to help ensure a
11 safe transit. The Puget Sound Pilots are required to obtain the pilotage endorsements
12 from the Coast Guard before they can receive their state license. The Coast Guard retains
13 licensing authorities over state pilots with respect to receiving medical clearances and
14 drug testing, and obvious controls regarding waterways management, but the State of
15 Washington has primary responsibility for direct oversight of Puget Sound Pilots
16 including licensing and accountability. While the state pilots are directly regulated under
17 the Pilotage Act, most pilotage on Puget Sound is directly regulated by the US Coast
18 Guard as the masters of the Washington State Ferry system comprise the largest ferry
19 operation in the world. Each and every WSF Master and Mate with navigational duties
20 must hold an appropriate first-class pilotage endorsement form the Coast Guard for the
21 route and vessel they serve on and are in fact masters also serve as the pilot. The Coast
22 Guard has responsibility to hold them accountable should there be an incident or
23 unacceptable performance or questions regarding fitness to serve.

24 Q: With respect to similarities, are WSF masters required to obtain the same federal license
25 to operate as a pilot on Puget Sound waters as members of the Puget Sound Pilots?

26 A: Yes, the possession of a pilotage endorsement for Puget Sound is a requirement of being

1 a WSF ferry master and this requirement is also spelled out unequivocally in the WSF
2 Collective Bargaining Agreement covering masters at §5.3 [Exh. JR-21]:

3 “5.3 Pilotage Required

4 A. All vessels of the Employer, while underway, not under its own power, must be
5 under the direction and control of a pilot, who possesses a pilotage endorsement for
6 the particular waters through which the vessel is being moved.

7 B. Only employees on the Masters eligibility list who possess a pilotage endorsement
8 for the particular waters through which a vessel is moved under its own power shall
9 be authorized or permitted to move the vessel as its Master.”

10 Q: If WSF masters are holders of the same federal pilot’s license as PSP pilots why are the
11 WSF masters not allowed to offer their services to the same vessels as PSP pilots?

12 A: State law prevents such an offer of services, as RCW 88.16.070 requires that, with
13 respect to the piloting of specific ocean-going vessels, such an offer of service and then
14 provision of pilotage is reserved solely to state-licensed pilots. All state-licensed pilots
15 are members of the unincorporated association of Puget Sound Pilots.

16 Q: Are there training differences between federal and state pilots?

17 A: Yes there are, but primarily because training has been tailored to the unique waterways,
18 docks, currents, weather and overall configuration of each pilotage district and to the
19 mix, type and size of vessels calling, but not necessarily because one license is federal
20 and one is state. I have been a regulator in waterways in both systems, and whether it is a
21 federal or state pilotage ground, the tailoring that hones the pilots local knowledge while
22 enhancing ship handling and use of tugs to dock and undock and how to maneuver in
23 tight waterways is critical to maintaining safety. These will change by waterway and the
24 focus of the training program, not necessarily based on whether the state or federal
25 agency is the primary licensing entity.

26 Q: Are PSP pilots operating their state license on the same waterways as WSF ferry masters

1 under the same federal pilot endorsements also completing the same workloads?

2 A: These two workforces have very similar licensing requirements but very different
3 workloads. Under the WSF masters Collective Bargaining Agreement, these employees
4 are credited with working an 80-hour bi-weekly schedule with varying degrees of
5 vacation time based on length of service and given an opportunity for Overtime
6 consideration. [Exh. JR-21] We are not in possession of individual WSF master time
7 cards, but under a 40 hour work week scheduling scenario a WSF master would be
8 working 1,800 plus hours or more on the bridge of a vessel per year. By comparison,
9 PSP pilots working an average 5.03 hours on the bridge of a vessel per move would
10 equal approximately 705 average annual hours on the bridge for the 2018-2019 PSP test
11 year.

12 Q: In your opinion, are federal pilotage grounds less safe than state pilotage grounds?

13 A: No, as discussed, the nature of these endorsements is nearly identical in most respects.
14 The difference is not in the skill or knowledge necessary to progress through the
15 licensing model, it's the governance models that sit over the license that are different but
16 the job task to be completed and skill set which is regulated by a license will be more or
17 less the same. I have administered exams and also regulated pilotage in ports with both a
18 primary state regulatory regime and a primary federal regulatory regime and both models
19 can deliver impressive marine safety results.

20 **B. Other Waterways Outside of Washington State, With the Exception of British**
21 **Columbia, Are Not Comparable Pilotage Grounds**

22 Q: Are other pilotage grounds comparable to the Puget Sound in terms of geographic
23 setting, waterway dimensions, navigational challenges presented by waterway
24 dimensions, hydrography, length of vessel transits, and other specific waterway criteria?

25 A: No, there are really few comparable bases for asserting that pilotage in the Puget Sound
26 is truly like any other North American ports. I served virtually my entire career

1 regulating vessels, mariners, and marine safety on the west coast, and I can
2 unequivocally state that there are significant differences in all the pilotage grounds. In
3 addition to my time serving as USCG Captain of the Port in the Puget Sound, I managed
4 Captain of the Port responsibilities for the Ports of Los Angeles, Long Beach, and Port
5 Hueneme, I have served as a port operations officer and investigator in San Francisco
6 and Humboldt Bay. In the Columbia River, I had to assess Coast Guard surf boat training
7 and operational metrics/reporting in and around the mouth of the Columbia River and I
8 have spent time in San Diego including navigation training with the Navy. None of these
9 harbors or waterways present the same waterway characteristics as the Puget Sound or
10 should be presented as comparable waterways for purposes of setting rates, establishing
11 training requirements, or creating arguments regarding attractiveness.

12 Q: Do you believe that the transit of vessels to the Port of Vancouver and within the waters
13 of British Columbia are comparable to the waters of the Puget Sound?

14 A: Yes. The waterways are comparably wide and deep, and the length of the transit is
15 comparable as well. Both operate in VTS areas and have relatively open steaming in
16 traffic lanes until they get closer to the port or terminal area. We also have the same
17 weather and similar tides and currents though currents are always unique to location and
18 time.

19 Q: In what other ways would you compare and contrast vessel transits and pilotage in
20 British Columbia to the Puget Sound?

21 A: First, I'd start with the fact that the entrance and exit waterway is the same waterway, the
22 Strait of Juan de Fuca. The transit from sea to each respective pilot station is virtually the
23 same, vessels transiting in the same traffic lane interacting with the same vessel traffic
24 system until finally an inbound vessel calling Vancouver or Delta Port or anchorages in
25 Canada makes a course change heading to Brotchie Ledge just south of Victoria to pick
26 up a BC pilot or, if calling a Puget Sound port or terminal, the vessel will head to the

1 pilot pick up area off Ediz Hook near Port Angeles. Second, whether calling on
2 Vancouver or Seattle, it is a comparable distance, with Tacoma being slightly farther.
3 While the remaining waterways are not the exact same in dimensions and current, they
4 are all relatively wide and deep with designated traffic lanes and a VTS. The weather is
5 comparable on average throughout the year with localized weather and currents at the
6 time of the transit always unique to where you are and when. Third, there are about 600
7 vessel calls per year in Canada that then call in Puget Sound and vice versa meaning
8 there is a significant overlap in the mix, type and size of vessels particularly with
9 container and cruise vessels. [Exh. MM-40] Fourth, both sides utilize assist and escort
10 tugs as needed or required and tug capabilities have all improved with better designs over
11 the past 30 years. Lastly, pilots on both sides have to be familiar with the specifics of
12 calling at each other's terminals, such as a Vancouver port call that has a bridge to pass
13 under, or that the Frazer terminals and waterways in Puget Sound are configured
14 differently with their own water and dimension characteristics. In general, there are many
15 comparable attributes based on shared waterways between the Puget Sound and BC,
16 which one can't say about too many other pilot grounds.

17 **XII. PMSA CONCURRED WITH THE DECISION AND RATIONALE TO MOVE**
18 **PILOT RATESETTING FUNCTIONS TO UTC**

19 Q: Did PMSA support SSB 6519 which moved pilotage rate setting processes from the BPC
20 to the UTC?

21 A: Yes.

22 Q: What were some of the bases for PMSA's support of SSB 6519?

23 A: We believe that there will be many benefits of eliminating the annual consideration of
24 rate-setting from the BPC in its entirety and provide the benefits to the pilotage system of
25 falling under the UTC's existing rate-setting authority, rules, and expertise. Chiefly,
26 safety will be enhanced at the BPC by allowing the pilots' licensing Board to focus

1 exclusively on licensing and training matters and not be dragged into the consistent
2 posturing and discussion on rates endemic to the prior system's required annual quasi-
3 legislative process. Of additional benefit, the ratemaking process would be improved by
4 removing the automatic annual process from the pilotage ground in its entirety, and then
5 by giving authority for tariff changes to the UTC to adjust only upon petition by a
6 stakeholder that carries a specific evidentiary burden to show that the current rates are
7 unfair, unjust, or not sufficient in a quasi-adjudicative process before disinterested, third
8 party commissioners assisted by an administrative law judge.

9 Q: Did PMSA concur with many of the recommendations of the JTC Report which
10 recommended the bifurcation of roles between the BPC, for licensing and safety
11 expertise, and the UTC, for rate setting expertise? [Exh. JR-20]

12 A: Yes.

13 Q: Does PMSA agree with the conclusion and recommendation of Finding Number 4 of the
14 JTC Report that the pilotage tariff and fee rate-setting processes should be transferred to
15 the UTC based on the history that BPC was making ratemaking decisions without "the
16 benefit of a well-defined methodology, data submission and review, and rate-setting
17 expertise"? [Exh. JR-20]

18 A: Yes.

19 Q: Does PMSA agree with Finding Number 5 of the JTC Report that annual tariff and fee
20 rate-setting is unnecessary? [Exh. JR-20]

21 A: Yes.

22 Q: Do you believe that the JTC recommendation to eliminate an annual rate-setting process
23 and to embrace evidence-based rate hearings that reflect economic necessity would
24 incentivize stakeholders to arrive at a mutually beneficial solution outside of the hearing
25 process?

26 A: That would be my hope. Presuming that this Petition is rejected by UTC, it would be

1 helpful for the Commission to direct would-be Petitioners to reach out to one another and
2 to encourage parties to try and gain consensus on items prior to filing a Petition,
3 something that did not happen this time.

4 Q: Do you agree with Finding Number 8 that significant uncertainty exists regarding PSP
5 capital financing and that these expenses, like other expenses, were not previously
6 subject to a defined methodology? [Exh. JR-20]

7 A: Yes.

8 Q: Do you agree with Recommendation Number 8 that the Puget Sound Pilots should
9 submit a funding plan, including capital projections? [Exh. JR-20]

10 A: Yes.

11 **XIII. THE COVID-19 PANDEMIC & RESULTING ECONOMIC DOWNTURN WILL**
12 **MAKE COMPETITIVENESS IMPACTS OF A TARIFF INCREASE MORE ACUTE**

13 Q: Was the PSP Petition submission of November 2019 filed prior to the beginning of the
14 COVID-19 pandemic?

15 A: Yes, the COVID-19 pandemic did not commence until the WHO declared it a pandemic
16 on March 11, 2020 and the White House issued a National Emergency Proclamation on
17 March 13, 2020. [Exh. JR-20]

18 Q: Is the State of Washington presently impacted by the COVID-19 pandemic?

19 A: Yes, the State of Washington is significantly impacted by the COVID-19 pandemic in
20 multiple respects. With respect to public health, the state is under a comprehensive and
21 unprecedented state “Stay at Home, Stay Healthy Order” issued on March 23, 2020. On
22 April 2, 2020, the Governor extended the order to May 4, 2020. On May 1, 2020, he
23 extended the Stay at Home Order through May 31, 2020 [Exh. JR-25] With respect to the
24 economy, the State is also suffering from exceptionally significant economic and fiscal
25 ramifications from the COVID-19 pandemic. On May 13, 2020, the Governor issued a
26 freeze on hiring, personal service contracts, and equipment purchases. [Exh. JR-26] On

1 May 13, 2020, David Schumacher, Director of the Office of Financial Management,
2 issued a memo to all state departments that the latest unofficial state financial forecast
3 indicated that revenues over the next three fiscal years, would be \$7 billion less than
4 what was forecast less than three months ago. Director Schumacher's memo details
5 proposed cuts to most state departments and agencies, targeting 15 percent in reductions.
6 [Exh. JR-27] The state also reported that it has paid out nearly \$2.9 billion in
7 unemployment benefits since March 7, including \$767 million in one week. Of the
8 1,027,292 individuals who have filed unemployment claims, 751,149 have received
9 benefits [Exh. JR-28]

10 Q: Has the COVID-19 pandemic impacted the regulation of vessel operations?

11 A: Yes, in multiple respects, both regarding vessel regulation and the economic footing of
12 the maritime industry. With respect to the regulation of vessels, the US Coast Guard has
13 issued multiple Marine Safety Information Bulletins on the subject of maritime
14 operations and additional restrictions and procedures for ship operators and crew. [Exh.
15 JR-29]

16 Q: Describe how the maritime industry, with specific emphasis on the container and cruise
17 businesses in the Puget Sound, have been impacted by the COVID-19 pandemic and the
18 resulting significant economic impacts?

19 A: The maritime industry has suffered tremendous impacts globally from the COVID-19
20 pandemic and those impacts are being felt acutely in the Puget Sound, where the
21 container and cruise ship businesses at the Northwest Seaport Alliance ports are severely
22 contracted. [Exh. JR-28] On May 14, 2020, Holland America Line, headquartered in
23 Seattle announced it was laying off approximately 2000 employees. [Exh. JR-28] The
24 NW Seaport Alliance announced May 18, 2020, that container cargo throughput in April
25 2020, was down by 24 percent compared to April of last year. [Exh. JR-30]

26 Q: Has the COVID-19 crisis impacted the number of vessel calls in the Puget Sound?

1 A: Yes. With respect to the container ship business, the NWSA has announced that there
2 have been 39 blank sailings through April and that they expect up to 57 total through
3 July, and that the container volumes are down year-to-date by 17%. [Exh. JR-28] This
4 will result in fewer pilot assignments and result in thousands of fewer goods in
5 waterborne commerce moving across the docks in the Puget Sound.

6 With respect to the cruise ship business, it is decimated. Most cruise vessels will
7 not be calling in the Puget Sound, if any are sailing at all, this season. [Exh. JR-28] If the
8 entirety of the cruise season should be cancelled, this would result in approximately 464
9 fewer pilot assignments.

10 Q: What are the consequences of these severe contractions?

11 A: Companies are announcing significant and impactful restructurings of their operations,
12 including cutting spending, reducing budgets, laying off staff, and historic losses. There
13 are many examples of shipping lines cutting costs. One recent interview with a container
14 carrier executive revealed that “The shape of the recovery is very uncertain. We are
15 cutting costs as much as we can to counter the missing volume and to have sufficient
16 liquidity.” [Exh. JR-28]

17 Q: Are the impacts of the COVID-19 pandemic and resulting economic crisis significant or
18 material changes to the conditions and expert testimony underlying the PSP Petition?

19 A: Yes. The whole world has been turned upside down by the pandemic and resulting
20 economic downturn in the last three months and no one could have predicted last
21 November how this crisis would have materialized and so significantly and materially
22 undermined all traditional assumptions about the business climate in general and its
23 impacts on the maritime industry in particular. The PSP Petition made numerous
24 assumptions about future changes in the number of vessel calls, pilot assignments,
25 fatigue, the need for additional pilots, anticipated costs, and anticipated revenues; none of
26 those assumptions likely have much bearing to the reality on the ground at present.

1 **XIV. THE DRAMATIC AND INCONSISTENT TARIFF OUTCOMES PROPOSED BY**
2 **PSP ARE NOT CLEARLY EXPLAINED, IDENTIFIED, OR JUSTIFIED**

3 Q: Were you able to find in PSP's petition a proposed tariff which is directly comparative to
4 the current tariff which clearly identifies all of the PSP proposed changes to the rates and
5 charges in the current tariff?

6 A: No. PSP did not follow WAC 480-160-110 which requires that "[e]ach change in rates,
7 charges, terms, or conditions in a tariff must be clearly identified by including the
8 appropriate code symbol immediately to the left of the material being changed."

9 Q: Were you able to clearly understand how and why each proposed change was being
10 made, identify each change proposed through a full description of each change, and read
11 a clear reason for each proposed change in the current tariff?

12 A: No. While the testimony of PSP may have nominally met the requirements of WAC 480-
13 160-120 in terms of a cursory explanation of proposed changes, the changes themselves
14 are not clearly identified and explained with respect to their relationship to the current
15 tariff for all 3 years proposed.

16 Q: Did PMSA ask for PSP to produce a version of the proposed tariff that was consistent
17 with WAC 480-160-110 and WAC 480-160-120 for each of the proposed years, and if
18 so, what was the response?

19 A: We did ask for such production in PMSA DR 202. The PSP response was that
20 compliance with the requirements to clearly identify and describe each of the proposed
21 changes to the tariff "would be an exercise in futility" and our request for PSP to follow
22 the WAC was dismissed as "make work." (PSP Response to PMSA DR 202)

23 Q: Without such descriptions as required by the WAC, is it functionally possible for you to
24 ascertain from the PSP petition why or how the proposed tariff decreases some vessel
25 costs in one year while increasing costs on that same vessel in another year?

26 A: No. There is neither a specific notation nor a clear description associated with specific

1 tariff items which describe why or how the tariff are intended to work over multiple
2 years and vessels and why some vessel rates decrease in one year and increase in a
3 different year for the same vessel.

4 Q: Is it possible for you to ascertain from the PSP petition why or how the proposed tariff
5 will increase some vessel costs by dramatic amounts in one year while increasing costs
6 on that same vessel by a different rate in another year?

7 A: No, and this was a significant and material barrier to being able to clearly evaluate the
8 proposed changes in a cumulative manner across the industry. While individual vessel
9 costs were detailed, there is no clear description of how or why the tariff increases and
10 the proposed structural reforms of the tariff are intended to work over multiple years and
11 vessels, and it is impossible to isolate one or any basis for a specific rate outcome under
12 this proposal.

13 Q: Can you provide some specific examples of these changes and how these could impact
14 potential future rates?

15 A: Yes, upon analyzing the PSP Petition's projected Revenue Calculations at Exh. WTB-11,
16 we were shocked to discover that the range of proposed changes in rates to vessels is
17 astoundingly wide. On a percentage basis, the highest increase, on the OOCL Oakland
18 (Invoice No. 184355), is an increase of +519.7% and the lowest decrease, on the
19 Celebrity Solstice (Invoice No. 183926), is a decrease of -63%. On a dollar charged
20 basis, the highest increase, on the Star Grip (Invoice No. 180327), is an increase of
21 +\$7,220.56 and the lowest decrease, again on the Celebrity Solstice (Invoice No.
22 183926), is a decrease of -\$6,791.25. This is an astonishing range of outcomes on both a
23 percentage basis and on a dollar basis, especially since no argument or justification for
24 these individual charges can be isolated or identified in the new tariff schedule.

25 Q: Aside from the largest and smallest individual vessel impacts, what are some other
26 broader changes which would impact larger numbers of vessels in the PSP proposal?

1 A: The proposed new rates don't just create impacts at the extremes, but across vast
2 numbers of ships and fleets. Again, looking at the PSP Revenue Calculations under the
3 proposed tariff (Exh. WTB-11), there are over 1,200 vessels which will see their tariff
4 rates doubled under the new tariff. That is 1,200 vessels out of 7,000 that will have a
5 100% or greater increase in their pilotage charges overnight! That is an astoundingly
6 large group of pilotage customers who will suffer a dramatic rate of increase and an
7 outcome which is not explained, identified, or justified on a per variable basis anywhere
8 in the PSP tariff submission.

9 Q: Would these types of tariff increases be a dramatic and surprising change for pilotage
10 customers?

11 A: Yes, traditionally when a change is announced, it is described in terms of percentage
12 increases on the current tariff, and whether proscribed as an incremental adjustment
13 across the board or on a charge-by-charge basis, the actual changes in tariff payments
14 would roughly approximate the change in the tariff percentage. In this process there is an
15 average increase across the board, but individuals' changes in tariff payments could be
16 vastly, and surprisingly, different.

17 Q: What was your reaction to being unable to isolate any proposed variables to check or
18 evaluate how the PSP tariff could be alternatively viewed, evaluated, or modified?

19 A: It is frustrating, because PSP is essentially changing every variable for every vessel call,
20 it is functionally impossible to isolate any individual variables for any vessel call.
21 Variable isolation is important in order to test or probe formula changes, relative costs, or
22 the fairness of the proposal across multiple vessels, vessel types, or sizes.

23 Q: Why is the ability to adjust variables important to this rate-setting?

24 A: Without the ability to segregate, test, and evaluate individual components of the
25 proposed tariff what PSP has proposed is essentially a take-it-or-leave it proposition.
26 There is no functional way for stakeholders or ratepayers to propose an amendment,

1 alternative, or counterproposal to achieve any specific improvement, to optimize a rate,
2 or achieve any specific policy with specificity. This is exactly the type of Petition that the
3 rules in the WAC are intended to discourage and the same type of Petition which the JTC
4 intended to avoid by moving this process to the UTC.

5 **XV. PMSA RECOMMENDATIONS**

6 **1) UTC SHOULD REJECT PSP'S PETITION**

7 Q: Has PSP proven that the current tariff is unfair, unjust, unreasonable, or insufficient?

8 A: No.

9 Q: Should the UTC reject the PSP Petition?

10 A: Yes, PMSA recommends that UTC reject the PSP Petition and maintain the current tariff.

11 **2) UTC SHOULD INVITE STAKEHOLDERS TO PROPOSE A REVENUE- 12 NEUTRAL RESTRUCTURED PILOTAGE TARIFF**

13 Q: Should the UTC direct its staff to lead a tariff revision process with the stakeholders to
14 create a set of tariff changes which are structured to result in no net additional revenue to
15 PSP but which improves the fairness and clarity of the current tariff?

16 A: Yes. PMSA recommends that UTC direct the process to evaluate restructuring the
17 current tariff.

18 Q: Does PMSA believe it would be possible to restructure the pilotage rate schedule to
19 make it more transparent, simpler, and accountable to ratepayers, regulators, and the
20 public?

21 A: Yes. Although we do not believe that the current tariff has proven hard for customers to
22 understand or is based on particularly complicated concepts, PMSA agrees that elements
23 of the current tariff structure could be restructured so they are less opaque, less complex,
24 and introduce fewer variables.

25 Q: What is one way in which a concept in the proposed tariff presents a likely source of
26 consensus amongst stakeholders in a tariff restructuring process if ordered by the UTC?

1 A: The proposed PSP tariff, while still increasing overall costs on vessels and ultimately
2 exacerbating the issue in its proposal, acknowledges that the tonnage tariff at the top tiers
3 is fundamentally unfair and needs a downward adjustment. Not only do bigger ships pay
4 more than smaller ships, but the upper tier is an order of magnitude greater rate than the
5 bottom tier. This is commonly referred to as a “tonnage penalty.” Although we disagree
6 with the PSP petition to UTC, PSP has agreed with PMSA and the ports that the upper
7 tonnage costs must be reduced and the tonnage penalty needs to be addressed.

8 Q: Describe when this agreement was already reached on this subject.

9 A: Yes, all of the major stakeholders before the BPC in 2014 agreed that the tonnage rates
10 needed reform with respect to the upper tier tonnage costs. PSP, PMSA and the Ports of
11 Seattle and Tacoma made a joint proposal for such an adjustment at that time. [Exh.
12 MM-41].

13 Q: Is there another area of potential consensus on a revenue-neutral rate restructuring
14 element if directed by the UTC?

15 A: Yes. PSP has proposed to use hourly charges for the current tariff. PMSA does not have
16 an official position on switching entirely to a gross or net hourly pay structure, but we
17 agree that a move to a rate of hourly pay for bridge hours could improve accountability
18 and transparency. We would of course expect such a charge to be imposed only for the
19 actual provision of time of vessel services, not include time charges for non-vessel-
20 servicing tasks, and be precisely calculated – as opposed to rounded up to the next hour
21 as it is in the PSP proposal (at significant industry expense). Such a change may improve
22 clarity and accountability in the pilotage grounds. At present, the stated hours for work
23 vary, and are incredibly inconsistent with actual pilot earnings per hour on assignment.
24 One improvement may be to consider making the hourly rate the same across the board
25 for all licensees’ performance of service for vessels. For reference, the primary stated
26 hourly wage for PSP now is \$274 per hour, but many vessel invoices reflect payments

1 well above that standard.

2 **3) UTC SHOULD AUDIT PUGET SOUND PILOTS**

3 Q: Should the UTC direct its staff to conduct an audit of PSP operations?

4 A: Yes. PMSA recommends that UTC direct an efficiency audit.

5 Q: Why does PMSA recommend an efficiency audit?

6 A: Elements of the current tariff structure should be audited in order to reduce the possibility
7 of overcharging ratepayers for PSP inefficiencies. An efficiency audit would potentially
8 identify efficiencies that should be implemented to improve safety and/or decrease costs.
9 To my understanding, no comprehensive efficiency and performance audit and
10 evaluation of PSP operations has ever been conducted.

11 Q: What results would be viewed as a successful outcome of an efficiency audit?

12 A: Pilots should have a tariff that provides them with internal management incentives to be
13 more efficient and to organize themselves in a manner where pilots are rewarded for
14 working not for minimizing work. The present model, wherein PSP is seeking higher
15 rates to facilitate less work, is anathema to a working environment that is based on the
16 principle that those who perform more assignments will naturally receive higher
17 earnings. The present incentives are upside down and this first hearing after the
18 Legislature's shift of ratemaking from BPC to UTC provides an opportunity to evaluate a
19 true cost-of-service model. An efficiency audit could identify areas of inefficiency in
20 PSP that could be eliminated. It could also demonstrate to pilots where they could earn
21 more net income per assignment by reducing their costs without a tariff adjustment. Such
22 efficiency improvements would be a win-win for pilots and ratepayers.

23 Q: What are some potential areas of inefficiency that might be reviewed in an audit?

24 A: More efficient dispatch, assignment, and watch standing protocols may eliminate the
25 present inefficiencies plaguing these aspects of pilot assignments and watch standing.
26 Much of the PSP Petition was aimed at adding large amounts of new tariff in order to

1 either induce or pay for future supplies of pilotage labor, but no attempt was made by
2 PSP to first better match pilots to demand, to address callback situations, and to remedy
3 management deficiencies. The PSP system right now facilitated an annual average
4 amongst pilots of at least 220 days not actively piloting each year, but they still could not
5 manage to avoid 70 delays for lack of pilot availability. Now in this Petition, PSP has
6 requested tariff increases based on a schedule where pilots are paid for up to 249 days of
7 not piloting each year. We acknowledge and support some of the days not piloting are
8 involved in training and state Board meetings, but clearly there are many days available.
9 Clearly, management of assignments needs to be addressed prior to granting PSP any
10 further paid days off.

11 Q: What other aspects of PSP operations could such a review include?

12 A: This efficiency audit could also include an assessment of policies regarding vacations,
13 comp days, non-essential meeting attendance in lieu of piloting, and a job task analysis
14 of the Executive Director and staff to determine what tasks are essential to provide
15 pilotage service, and whether additional tasks could be completed by existing or new
16 staff instead of by a licensed pilot substituting time in the office for time on the water or
17 by expensive contract attorney.

18 **4) UTC SHOULD APPROVE TWO TARIFF INCREASES: ONE FOR UTC COSTS**
19 **& ONE FOR TRAINEE STIPENDS AT BPC**

20 Q: Should the UTC approve a tariff increase for the limited purpose of compensating UTC
21 for the costs of the review of the PSP Petition?

22 A: Yes, PMSA recommends that the tariff should be increased by an amount to be
23 determined by UTC pursuant to RCW 81.116.060 upon consultation and additional input
24 from ratepayers in the pendency of this process. PMSA agrees that the costs of this
25 proceeding to set the tariff rates may be recaptured as part of the tariff.

26 Q: Should the UTC approve a tariff increase in order to increase funding for the costs of

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Trainee Stipends at BPC?

A: Yes, PMSA recommends that the tariff should be increased from the current surcharge rate of \$15 to \$19 consistent with the BPC “Training Surcharge/Trainee Stipend Increase Request” (Exh. WTB-06) and pursuant to WAC 363-116-078.

XVI. CONCLUSION

Q: Do you conclude your testimony in this matter at the present time?

A: Yes, I do.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed on this 27th day of May 2020 at Mukilteo, Washington.



Capt. Michael Moore
Pacific Merchant Shipping Association