Exhibit MM-42T
Docket TP-190976
Witness: Capt. Michael Moore

BEFORE THE WASHINGTON

UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND PILOTS, Respondent.	**DOCKET TP-190976** CROSS-ANSWERING TESTIMONY OF CAPT. MICHAEL MOORE ON BEHALF OF PACIFIC MERCHANT SHIPPING ASSOCIATION

CROSS-ANSWERING TESTIMONY OF

Captain Michael Moore

ON BEHALF OF

PACIFIC MERCHANT SHIPPING ASSOCIATION

Commission Staff Ratesetting

Methodology and Recommendations

July 13, 2020

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I. INTRODUCTION

Q Please state your name, position and business address.

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

Q: Are you the same Capt. Moore who previously filed testimony in this proceeding?

A: Yes. I previously filed Response Testimony on behalf of the Pacific Merchant Shipping Association ("PMSA") in this matter regarding the setting of pilotage rates in the form of a new pilotage tariff in the Puget Sound before the Washington Utilities and Transportation Commission ("Commission").

Q: What is the purpose of your cross-answering testimony?

A: On behalf of ratepayer-intervenor PMSA, my testimony here addresses points raised in the testimony and exhibits that Commission Staff ("Staff") filed in response to the tariff filings of the Puget Sound Pilots ("PSP").

Q: Please summarize the cross-answering testimony you are submitting in response to the Staff testimony.

A: My testimony here addresses various issues regarding the recommendations and comments of Staff with respect to the PSP tariff filings. In part, my testimony addresses the need of PSP to carry its evidentiary burden as a preliminary matter and that the Staff testimony and recommendations are predicated on the initial consideration of that threshold requirement. Subject to a reservation of rights on this point, the balance of the testimony points out where PMSA agrees or disagrees with the proposed ratemaking principles and methodologies proposed by Staff with respect to revenue requirements, expenses, the number of pilots, the structure of the tariff itself, and the capture of all compensation received by pilots. With respect to the relationship to the existing tariff, my testimony focuses on the Staff recommendation to create a new methodology for ratemaking given that this is the initial foray of the Commission and stakeholders under this new statutory and regulatory scenario. My testimony also includes a criticism of the proposed Staff recommendation for ratepayers to fund a licensed pilot in a non-working PSP Vice President position and to note the need to clarify which calculations for average annual assignment and number of pilots are associated with this recommendation. Further, my testimony discusses Staff recommended rate increases without any phase-in where the increases would both be substantial and cause rate shock for many vessels. This testimony includes an evaluation of Staff recommendations regarding which PSP expenditures should or should not be included in the tariff and to whether these expenses by category and/or amount are essential to the provision of pilotage. Finally, my testimony expresses PMSA's agreement with the Staff recommendation that vessels not be subject to double charges for services already provided and paid for due to the PSP internal pilot availability management issues and accounting for its callback and retirement programs, which must not result in an external liability for vessels.

II. FORWARD-LOOKING STAFF TESTIMONY IS APPLICABLE ONLY IF PSP PROVES THAT THE EXISTING TARIFF IS NOT FAIR, JUST, REASONABLE, AND SUFFICIENT

Q: Do you concur with Staff's description that their approach "began by constructing a forward-looking costs study" (Exh. DPK-1T, pg. 6) and that "[t]here was no preliminary evaluation of results before the inclusion of pilotage compensation" (UTC Response to PMSA Data Request No. 2, Exh. MM-48 at 1) that demonstrated that PSP has proven that the existing tariff was not fair, just, reasonable and sufficient as required by RCW 81.116.020(3)?

A: Yes, we agree with Staff that their testimony did not evaluate, address or analyze whether PSP has carried its burden of proof on an initial determination that the current rates are unfair, unjust, unreasonable, and insufficient, as required by RCW 81.116.020(3). PMSA is submitting simultaneously with this testimony a Motion for Summary Determination regarding PSP's lack of evidence on the question of the existing tariff and its expressed views that such an initial determination of the RCW 81.116.020(3) factors are "irrelevant" squarely before the Commission prior to its evaluation of other questions.

Q: Is it appropriate that Staff started their analysis by constructing "a pro forma income statement" (Exh. DPK-1T at 6) that is presumptive of a finding on the threshold question?

A: Yes, it is only logical that the Staff can only work with the evidence at their disposal and as provided, primarily, by PSP as the filing party. We believe a pro forma is necessary and appropriate for Staff to prepare here because they must be able to advise the Commission if, in the first instance, the Commission does in fact determine that PSP has carried its burden of proof on an initial determination as required by RCW 81.116.020(3). We furthermore appreciate the Staff clarifying the specific testimony of PSP that was relied upon to arrive at their conclusions in this regard.

Q: Do you provide additional Cross-Answering Testimony to the Staff pro forma income statement here in a manner which is complementary to the PMSA Motion for Summary Determination?

A: Yes, on behalf of PMSA, I hereby incorporate by reference into my testimony all facts set forth in the PMSA Motion for Summary Determination and provide all testimony here with respect to the Staff pro forma, and any other examinations of the PSP tariff filings and Staff Response to those filings, subject to a reservation of our rights and subject to the arguments in the PMSA Motion for Summary Determination.

Q: Is all of your Cross-Answering Testimony here made subject to a reservation of rights and subject to the arguments in the PMSA Motion for Summary Determination?

A: Yes, my testimony here incorporates by reference, reserves all rights thereto, and is proffered contingent upon the arguments in the PMSA Motion for Summary Determination. This is consistent with my original testimony (Exh. MM-1Tr), which focused extensively on the threshold question of the adequacy of the current tariff. The balance of my comments in this cross-answering testimony attempts to not retread or repeat that testimony. This cross-answering testimony is only intended to be applicable in the instance that the Commission must turn to the Staff's forward-looking evaluation of what a fair, just, reasonable, and sufficient future tariff should be because it has already first found that PSP carried its burden of proof to show that the existing tariff is unfair, unjust, unreasonable, and insufficient.

III. PROPOSED RATEMAKING PRINCIPLES AND METHODOLOGY

Q: Do you agree with Staff that the Commission must set out "the regulatory principles and methods" that should be applied in order "to determine proper maritime pilotage rates and charges that are fair, just, reasonable, and sufficient" (Exh. DPK-1T at 5)?

A: Yes.

A. The tariff must cover only the actual and essential expenses necessary to provide pilotage service, and pilot compensation must be based on actual services provided.

Q: Do you agree with Staff that there must be a "revenue requirement that provides for the recovery of operating and administrative expenses, the recovery of investment in the form of depreciation expense and the cost of financing as interest expense" (Exh. DPK-1T at 6)?

A: Yes, we agree provided that the revenue requirement only exists to the extent that both the type and the level of operating and administrative expenses are justified as essential to the provision of pilotage services. (See Exh. MM-1Tr at 100:21-114:6; see also infra, Sec. VII.)

Q: Do you agree with Staff that "[i]n addition, the total revenue requirement also includes compensation for each of the pilots providing service…" (Exh. DPK-1T at 6)?

A: Yes, pilots must receive compensation when they actually provide services to vessels. PMSA agrees with Staff that the tariff should include compensation for the provision of service, with Staff's use of a "cost of service" hourly rate model (not annual), and with the Staff analogy that it is "much like a usage rate." (Exh. SS-1T at 18-19, 21.)

Q: Do you agree with Staff that "the total revenue requirement" should only include "compensation for each of the pilots providing service in the form of distributed net income" (Exh. DPK-1T at 6)?

A: We disagree with the conclusion that "compensation" should only include distributed net income, and instead we believe that all pilot forms of compensation should be identified in this category of the total revenue requirement. Right now many forms of pilot compensation are instead included as "expenses"; these other types of non-net income pilot compensation should be appropriately labeled and accounted for in the revenue requirement as compensation to pilots. Pilots are not employees, they are all partners and co-owners, so these expenses are not treated the same as if they were office or pilot boat operating expenses or administrative overhead. (See Exh. MM-1Tr at 100:21-114:6; infra, Sec. VII). Correctly labeling these items will not change the overall revenue requirement identified by the Staff, just the accounting of how and what the charges actually represent.

Q: Can you provide an example of forms of PSP "expenses" that are actually a form of pilot compensation?

A: Yes, PSP pilots receive multiple forms of compensation in addition to monthly distribution of net income based on volume/type of pilotage service each month, including medical insurance benefits, licensing payments, transportation reimbursements and/or allowances, individual business expenses, association dues, and eventually share-out equity and retirement payments with the present value unreported. These are currently variously accounted for, most often as operating or administrative expenses, and they have been treated inconsistently over the years. They can and should be more accurately be accounted for in the revenue requirement as pilot compensation instead.

B. Revenue requirements should not reflect a theoretical Distributed Net Income predicated on the number of licensed pilots. Rather, it should reflect revenues per pilot assignment or pilot hour worked (cost of service).

Q: Do you interpret the phrase "compensation for each of the pilots providing service" to necessitate that a future tariff be based on a revenue requirement with a Distributed Net Income basis for rates where revenues are divided and averaged amongst all of the pilots equally?

A: No, nothing requires a "Distributed Net Income" as an average to be divided and shared amongst all of the pilots equally.

Q: If there is no such term in the ratesetting regulations or in the Pilotage Act, what units are identified to be reported?

A: The financial reporting required under the Pilotage Act actually requires that each pilot report "shall contain an account of all moneys received for pilotage by him or her or by any other person for the pilot or on the pilot's account or for his or her benefit" and the "amount charged to and/or collected from each vessel . . . ." RCW 88.16.110. PMSA has already included these reports herein for all of the years under the current tariff, 2015-2019, at Exh. JR-16r.

Q: How has the Staff proposed to meet its Revenue Requirement by using a Total Distributed Net Income factor?

A: As proposed by Staff, Total Distributed Net Income ("TDNI") is defined as "TDNI = Distributed Net Income * Pilots" where "Pilots" is the number of funded pilots (Exh. DPK-1T at 9).

Q: Can the same Revenue Requirement of TDNI be achieved by utilization of different terms?

A: Yes, as confirmed at UTC Response to PMSA Data Request No. 9 (Exh. MM-48 at 2), the same Revenue Requirement of TDNI can be achieved by utilization of the terms "'TDNI = (TA * ARPA) – Exp – Dep – Int' where TA = Total Ship Movement Assignments and ARPA = Average Revenue per Assignment, and the other expense categories are the same as described at Exh. DPK-1T, p. 7."

Q: Could these Revenues per Assignment also be restated as Revenues per Hour?

A: Yes, that would even more closely align with the Staff proposed Tariff Structure, which proposes a tonnage rate to cover the costs of PSP Overhead costs and a pilotage hourly rate to pay the income distribution to pilots. We would also note that the PSP proposed Tariff redesign also includes a bridge hour charge approach.

Q: Why do you believe that, even if generating the same portion of the Revenue Requirement as the Staff proposed TDNI, that a calculation based on Average Revenues per Assignment or Revenues per Bridge Hour is a more appropriate formula component?

A: The Staff proposed Tariff sets up a Bridge Hour charge to pay for pilot compensation, exclusive of overhead expenses which are covered by a tonnage charge. As restated by Staff at UTC Response to PMSA Data Request No. 17 (Exh. MM-48 at 3), a correct restatement of Staff's proposal is "the gross tonnage revenues are estimated to cover PSP operating expenses and administrative overhead and that the 'usage rate' revenues, charged per hour of pilotage services delivered, are a service time rate estimated to compensate for pilot time." PMSA generally believes that this type of tariff framework can be implemented in a fair and reasonable manner as it directly ties to actual service provided. Therefore, in PMSA's view, a calculation of Revenues per Bridge Hour (or Revenues per Assignment, based on an average number of bridge hours per assignment), would present a direct alignment between the Required Revenue formula and the proposed Tariff. This would be a much better basis for determining revenues than the number of pilots, a factor which is not directly correlated to productivity. It would also incentivize pilots to seek efficiencies and optimize staffing, both of which the Pilotage Act requires.

Q: What are the reasons why you believe building the TDNI metric around the number of pilots as proposed by Staff is inappropriate?

A: The tariff should not be built around a presumption that there must be a certain number of licensees, or that licensees should be told what their average compensation should be regardless of work level, or even that the state should set a standard based on how these licensees choose amongst themselves to do private revenue-sharing on a redistributed basis pursuant to their own agreements (so long as doing so does not undermine Pilotage Act requirements). Setting a volumetric tariff based on the number of assignments or bridge hours consistent with paying an actual pilot by the hour or assignment for the services actually provided by that pilot to that vessel makes much more sense than setting a tariff on the basis of a formula which is set based on a theory of how to make a vessel pay for all of the other pilots who are NOT providing services to that vessel.

Q: Are there other reasons why you would prefer a metric based on actual pilotage service provided and not based on the number of pilots?

A: If one considers that the Board must set the number of pilots from time to time "to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service" (RCW 88.16.035(1)(d)), then from the perspective of a vessel being serviced, whether there are 30 pilots licensed or 90 pilots licensed, so long as all the pilots are competent, well rested, fully trained, and the service is competent, the rate is the same, and expenses are appropriately controlled, the number of pilots does not impact the pilotage tariff. The tariff structure proposed by the Staff reflects this principle – the pilot's take home net income is paid by the hour for the value of the pilot's service provided and it does not vary with the number of licensees. But, while the Staff tariff structure reflects this principle, the revenue requirement formula proposed by Staff does not. PMSA believes that the Revenue Requirement formula should reflect this principle of revenue provided in exchange for service provided, not in exchange for payment to pilots who are decidedly not providing a service to that vessel. By paying pilots for what they work, the tariff and an aligned revenue requirement formula would help to discourage efficiencies.

Q: Is PMSA opposed to PSP privately agreeing amongst its members to distribute net revenues?

A: No, PMSA believes that PSP members have the right to contract amongst themselves how to redistribute these revenues earned by each pilot for providing pilotage services. However, because PSP's bylaws guarantee that distribution is independent of productivity this results in inefficiencies and costs that should not become part of tariff increase arguments. To this end we encourage ratesetting that creates incentives to pursue efficiencies per the Pilotage Act and that in addition provides incentives to consider tiered distributions based on license levels and productivity. Consistently, the proposed tariff by Staff is built on a base rate plus a rate to generate distributable income for the service provided—the Revenue Requirement formula should reflect this as well.

C. The economic relationship of PSP with its membership must be closely scrutinized to ensure accuracy in expenses and compensation.

Q: What are some of the reasons why you would like to see all pilot compensation accounted for consistently across categories and not limited to just a Distributed Net Income?

A: If not properly accounted for, PSP could artificially decrease their distributed net income by increasing their "expenses" some of which are, in actuality, payments to pilots. Likewise, PSP could artificially increase their distributed net income by decreasing these "expenses" which are also payments to pilots. PMSA had complained of this type of inconsistent practice in prior ratesetting processes at the BPC. In order to maintain apples-to-apples multi-year comparisons and to properly represent the total level of pilot compensation paid under the tariff the "compensation" component of the revenue requirement should be comprehensive of actual payments and benefits provided to pilots.

Q: Do you agree with the Staff conclusion that "[i]n contrast to most businesses, where the owners can also work as employees, the PSP organizational structure recognizes that each pilot constitutes a separate and distinct business entity" (Exh. DPK-1T at 6)?

A: Yes, and as such each pilot may have a unique approach to managing their own business including how they handle distributed income and whether they form as a sole proprietor or as a corporate entity or LLC.

Q: What are some examples of how this may be relevant to the evaluation of a cost factor for the Commission?

A: For example, if individual pilots make tax-deferred contributions to an IRS-approved and self-funded SEP-IRA retirement plan in addition to social

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security payments, an additional fully funded defined benefit would not be necessary and therefore reduce pressure on pilot expenses under the existing tariff.

Q: Did PMSA inquire as to whether or not each individual pilot business entity participated in any tax-deferred retirement plans?

A: Yes, PMSA asked PSP for copies of any individual retirement contributions. But according to its response, “PSP does not possess or maintain information regarding pilots’ contributions to or expenses for the administration of individual retirement plans, if any.”(PSP Response to PMSA Data Request No. 9 (Exh. MM-49 at 1).

Q: Are there other examples aside from retirement where the actions of an individual pilot business entity could impact the costs or claims of PSP when requesting a tariff change?

A: Yes, one example could be regarding reimbursement for transportation expenses. While one pilot may elect to be transported to a job by a significant other in a well-worn, used personal vehicle, another pilot might prefer to arrive by hired towncar. Or, another example, with medical benefits, one pilot may live alone with no children and want premium healthcare coverage while another might have three children, two step-children, a second wife and prefer a family plan at Kaiser Permanente, while yet another pilot may be retired from the military with health benefits extended to him/her and family making any PSP-provided medical benefit a waste of ratepayer revenues. These are all decisions that pilots, as independent businesspeople, can be making on their own.

Q: How does the payment of these expenses represent compensation to pilots?

A: When PSP centralizes and absorbs the payment of expenses, which were otherwise paid by pilots, and then records them as association "expenses" they are shifting dollars from being distributed to pilots and instead recording them as an association expense. But in the process they are also providing a benefit to pilots which is actually compensation to the pilot; instead of cash this compensation is no longer recorded as an earnings or income distribution. In this scenario, DNI would decrease, signaling a reduction in compensation, but the actual value of total net income plus benefits would remain the same. We would like the Commission to endorse an accounting that treats the indirect income or benefit scenario, such as when PSP makes a payment or a reimbursement for an expense for pilots or when PSP pays the expenses pre-distribution in lieu of individual pilots who would have otherwise made a payment for these expenses post-distribution, the same as any other direct income or benefit to the pilot.

Q: Do you agree with the Staff conclusion that "the scope of the Commission's economic regulation stops and goes no further than the individual pilot entities" in the context of "the PSP organizational structure" (Exh. DPK-1T at 6)?

A: No, we believe the Commission should acknowledge an authority consistent with the Pilotage Act, which affirmatively requires the regular reporting of economic data on a per pilot basis which provides transparency at the most transactional level possible per pilot (RCW 88.16.110). This is inclusive of individual pilot entities. Upon inquiry, Staff declined to identify any provision of the RCW or WAC which might be construed as limiting the scope of the Commission's regulatory authority to reach the actual provision of pilotage services by individual state licensed pilots. (UTC Response to PMSA Data Request No. 4, Exh. MM-49 at 3).

Q: Are you aware of any restrictions on the Commission authority to regulate pilotage rates that limit the Commission's scope of regulation on the private decision of the pilots to enter into a monopoly?

A: No, and to the contrary, the decision of the pilots to conduct their business as a monopoly only heightens the need for robust Commission application of its authority to regulate the economics of state pilotage on the Puget Sound. The State does not require individual pilots to organize themselves into a monopoly nor to conduct business in the manner that they have chosen (as an unincorporated association with bylaws). PSP's internal decisions with respect to its business form, or their internal decisions amongst its members pursuant to privately adopted by-laws do not, cannot, and should not limit the scope of the authority of the Commission to issue economic regulations regarding the provision of pilotage service by a pilotage monopoly made up of individual businesses of state licensed pilots.

Q: Did PMSA seek records in this proceeding which would have confirmed the extent and nature of the relationship between PSP and each "separate and distinct business entity" which represents each pilot licensee?

A: Yes, PMSA sought copies of the Schedule K-1 provided to each pilot business entity from PSP (PMSA Data Request to PSP No.16, Exh. MM-49 at 2) and the equity positions held in PSP of each pilot business entity (PMSA Data Request to PSP No. 1, Exh. MM-49 at 3).

Q: Did PSP provide any of these requested documents which would have provided details regarding the basic data by which one could analyze the business relationships between PSP and its membership?

A: No, PMSA was not provided with the responsive documents sought. Regarding pilots' equity interest in PSP, PSP objected to the provision of these documents as "not relevant helpful [sic] to the Commission's adjudication of this rate case when each pilot's share of revenue and expense are already included in PSP's audited financial statements filed with the Commission." (Exh. MM-49 at 3.) Regarding disclosure of the Schedule K-1s which would have clearly enunciated the total payments to pilots, and not just the reported amounts in the financial statements, PSP objected to such information as "irrelevant to its general rate proceeding" and that these documents contained the "personal information of pilots" but that "[a] more detailed portrayal of PSP's expenses and revenues" are included "in the form of an audited financial statement for 2018." (Exh. MM-49 at 2.)

Q: What is the significance of the lack of responsive documents to your testimony here?

A: It is important in the sense that if PSP is not going to share their business records that demonstrate their exact payment and equity relationships with their members but nevertheless claim a need for increases in tariff revenues based on PSP's desire to make higher payments to its members, then it is all the more imperative to clearly and consistently define, account for, and provide transparency about which expenses of PSP are external and which expenses are actually compensation and benefit payments to pilots.

Q: Do you believe that this accounting for compensation from PSP must also include a recognition of the rate of return for the pilots who are not simple employees but also owners and equity partners in PSP?

A: Yes, PMSA concurs with the initial testimony and cross-answering testimony of John Ramirez with respect to the need to account for a pilot's equity return on his or her partnership stake in PSP.

Q: Do you agree with Staff that a ratemaking formula should be used for pilotage which is "similar to formulas used in other industries that the Commission economically regulates" (Exh. DPK-1T at 7)?

A: Yes, PMSA concurs with this approach by Staff which is consistent with the recommendations of the JTC Report. That report advised moving ratesetting functions from the BPC to the Commission in order to take advantage of the ratesetting expertise of state PUCs for monopolies. (Exh. JR-20r)

Q: Do you agree that the Commission ratemaking formula should be a formula similar to those used in other industries that the Commission regulates?

A: Yes, PMSA agrees with the testimony of John Ramirez and believes that the ratemaking formula for the Puget Sound pilots should reflect the same or a similar basis for determining revenue requirements as described in each of the cited industries with a "similar" ratemaking formula – Electric, Natural Gas, and Water Distribution. (UTC Response to PMSA Data Request Nos. 5-6, Exh. MM-48 at 5-6.)

D. If pilotage revenue is charged by the hour, actual pilotage hours should be utilized rather than an artificially inflated accounting.

Q: Do you agree with Staff acceptance of the PSP proposition that hourly pilotage under the tariff should be calculated by always rounding up any fraction of an hour?

A: No. There is no reason why every fraction of any hour worked should always be rounded up, especially when rates can just as easily be charged by application of the actual time logged as a fraction of an hour. From the PSP filing it is obvious that PSP already measures each pilot's assignment to an actual time logged (Exh. WTB-11), making it easy to charge their time by the actual fraction of an hour piloted.

Q: Do you agree with the Staff statement that the average time of a pilotage assignment is 7-8 hours (Exh. DPK-1T at 16)?

A: No, this is inconsistent with PSP's actual time logged and disclosed in Exh. WTB-11. When the anomalies of Exhibit WTB-11 are removed, it resulted in a total of an average of 5.03 hours per assignment (Exh. MM-14r). When asked in UTC Response to PMSA Data Request No. 14 (Exh. MM-48 at 7), Staff also turned to the PSP data at Exhibit WTB-11 to evaluate the 7-8 hour average time and provided a Histogram (Exh. MM-48 at 8) that arrived at a revised average hourly time of 5.57 per move. We believe that both the PMSA average of 5.03 hour per move and the Staff histogram average of 5.57 hours per move are better approximations of pilot work time than 7-8 hours per assignment.

Q: How do the actual hour calculations of an average 5.03 hours per move by PMSA (Exh. MM-14r) and the revised Bin-sorted average hour calculations of 5.57 hours per move by Staff (Exh. MM-48 at 8) compare to the pilot hours used by PSP to calculate its proposed tariff?

A: PMSA reviewed and used the actual hours that pilots spent performing pilotage assignments, as described in Exh. WTB-11 at Column G "Hours." But when PSP, and seemingly the Staff relying on the representations of PSP, calculated "Job Hours" for purposes of calculating tariff rates, PSP rounded up to the next whole hour every single decimal amount greater than 0.01 hours. Because almost no job is exactly spot on to the hour, this practice of always rounding up "Hours" will always necessarily result in the "Job Hours" category reflecting a number of total hours which is thousands of hours greater than what was actually worked. This approach by PSP and Staff is not fair, because in nearly every circumstance vessels will always pay for another hour of cost.

IV. THE COMMISSION SHOULD EVALUATE THE ACTUAL HISTORICAL RECORD AND CURRENT TARIFF BUT AVOID RELIANCE ON A BPC "BLACK BOX" OF POLICY PRESUMPTIONS

Q: Do you agree with Staff that "the majority of the decisions by the BPC, in recent years, have been 'black box' decisions, that is, decisions that contain an end result but omit details of how that end result was determined" (Exh. DPK-1T at 5)?

A: Yes.

Q: Does PMSA agree with Staff that "[s]ince 2009 to 2019 the decision process used by the BPC has been a 'black box,' Staff cannot testify as to whether rate actions taken by the BPC were or were not consistent with Staff's proposed approach" (UTC Response to PMSA Data Request No. 11, Exh. MM-48 at 9)?

A: Yes.

Q: Do you agree with Staff that "through the years, a standard approach of setting rates, using only an overall percentage increase or single line item changes only, was adopted by the Board," (Exh. DPK-1T at 6) and that in the Staff recommendation that "there are no instances where Staff makes a recommendation that is consistent with the 'overall percentage increase' methodology or consistent with the 'single line item changes only' methodology" (UTC Response to PMSA Data Request No. 1, Exh. MM-48 at 10)?

A: Yes, though there was an instance where a line item offset other decreases in a revenue-neutral tariff change, and there was a transition to a minimum tonnage charge that is also an element of Staff's recommendation here.

Q: Does PMSA agree with Staff that the Commission should "continue to use the same rate-setting approaches used by the Board . . . to provide regulatory consistency" (Exh. DPK-1T at 5) despite the fact that the BPC process omitted methodologies, findings, and details?

A: Yes and no. Given the Staff's correct assessment that decisions of the BPC for over a decade have been without clear findings or methodology, it should not attempt to justify a specific methodology based on a policy consistency with the BPC's older, prior decisions. However, Staff should take notice of the consistency of the actual facts on the ground and the outcomes of most of the recent decisions of the Board to review expenses and revenues. Those facts are not subject to dispute or interpretation of a policy. The most regulatory consistent outcome of the last decade of Board decisions was, more often than not, that the Board did not believe it was necessary to increase pilotage rates. Indeed, over the past decade the most likely outcome of a tariff hearing at the BPC was that there was no change to the pilotage tariff: the BPC enacted a 0% tariff rate change in 2009, 2011, 2013, 2014, half of 2015 (revenue neutral change), half of 2016, 2017, 2018, and 2019. (Exh. MM-05.) So, while we agree with Staff that there is no specific policy or methodology for the Staff to emulate, we also believe that if the provision of regulatory consistency with prior BPC actions is a goal, that the Staff should recognize that when dealing with a volumetric rate structure there is natural per assignment revenue growth which will most often result in recommending no pilotage rate increase.

Q: What are the rate-setting approaches that should be principle sources of Commission direction on pilotage tariffs if not the BPC ratesetting model?

A: While the BPC process of ratesetting was administered with the best of intentions by Board members and staff in good faith, and substantively resulted, more often than not, in reasonable outcomes and 0% rate changes, it was fundamentally a quasi-legislative and political process. This resulted in outcomes without clear evidence and documentation for each decision. PMSA supported the move of ratesetting away from the BPC ratesetting model and to the Commission in concurrence with the conclusions and findings outlined in the JTC Report on state pilotage (Exh. JR-20r) in spite of the fact that we were in recent years very pleased with the BPC's track record at holding rates steady in the face of repeated requests for rate increases by PSP.

Q: Why would PMSA support a ratesetting process at the Commission if the recent BPC track record was to not increase rates on ratepayers?

A: PMSA saw the long-term benefits of moving to a more structured, quasi-judicial, and evidence-based approach on pilot rates and concurred with the following summarized observation of the JTC Report regarding the relative benefits of moving the pilot rate-setting functions from the BPC to the Commission: "The public utility commission model is an effective process for ratesetting for other jurisdictions. Oregon, Maryland, and Virginia use a public utility commission ("PUC") process for setting rates. This has led to fewer rate hearings and an incentive among all parties to arrive at an agreement outside and in advance of a hearing. The benefits of a PUC model include a clearly defined, transparent, rigorous, and enforceable timeline and process." (Exh. JR-20r at 67.) These benefits are the guideposts for the Commission here.

Q: Do you agree with Staff that there is value in trying to be consistent with prior BPC approaches to ratesetting?

A: Yes, we believe that the prior decisions of the BPC regarding rates need to be respected as well as the decisions of the BPC on non-rate related matters. The Commission should strive to be consistent with both. And as required by RCW 81.116.020(3), the existing tariff must also be treated as if it was adopted by the Commission and must stand unless and until a party proves that they are not fair, not just, not reasonable, and not sufficient. Moreover, with respect to evaluation of PSP expenses and costs, it is important that these historical expenses and costs be evaluated in the context of prior BPC approaches to evaluation of these expenses, as further discussed in this testimony below.

Q: Do you find it appropriate for Staff to rely on the "2001 Memorandum of Understanding used to set rates from 2001 to 2005" as an example of "the BPC's methods for setting rates for pilotage" (Exh. DPK-1T at 5)?

A: No. Not only was the maritime world a very different place when the private signatories entered into the 2001 MOU nearly 20 years ago, it is important to note that the BPC never adopted the 2001 MOU or any other MOU in the adoption of a tariff for the Puget Sound pilotage district. The MOUs allowed for joint submissions and recommendations by private parties to the BPC. The MOUs had the benefit of allowing private parties to make recommendations on rates based on multi-year stability involving a totality of factors and it was an agreement that provided upside protection to ratepayers and downside protection for pilots. The entirety of this approach is likely beyond the scope of Commission ratemaking now and BPC ratemaking then, including commitments by PSP not to play games with expenses, callbacks or the number of pilots, and for rate recommendations to reflect increases and decreases to reflect relative growth or contraction of vessel traffic and pilotage business. For better or worse, the Staff recommendation here, no matter how well-intentioned, would be hard-pressed to replicate such a comprehensive multi-year private party agreement without actually having all of the parties sitting down to stipulate to such an agreement. No attempt was made by PSP to initiate such a discussion before PSP filed its proposed tariff revisions here.

Q: What is PMSA's recommendation regarding the creation of new parameters for the adoption of a new pilotage tariff which might significantly deviate from prior BPC methodology as a basis for ratesetting?

A: As discussed in my original testimony, PMSA recommends that Commission direct the parties to address rate reforms through a collaborative revenue-neutral process of rate restructuring. (Exh. MM-1Tr at 153.)

V. THERE IS LITTLE TO NO JUSTIFICATION FOR UNDERWRITING A NON-WORKING PSP VICE PRESIDENT AND TAKING A LICENSED PILOT POSITION OFF THE WATER

Q: In the event that the Commission decides to proceed with the Staff-recommended TDNI formula, does PMSA agree with the Staff proposal to pay the PSP Vice President a full working pilot share of distributed net income without doing any actual piloting?

A: No. There is absolutely no value to be gained, or any good justification that has been proffered by PSP, for making industry pay for a second PSP officer, the Vice President, to not perform any work on the water. The Vice President is holding a state pilot license to actually pilot, not to do paperwork and tasks in the office. If the pilots need more administrative support they should achieve that through appropriate non-pilot staffing, not by taking a licensed spot away from a potential licensee that actually wants to pilot and provide service on the water to vessels.

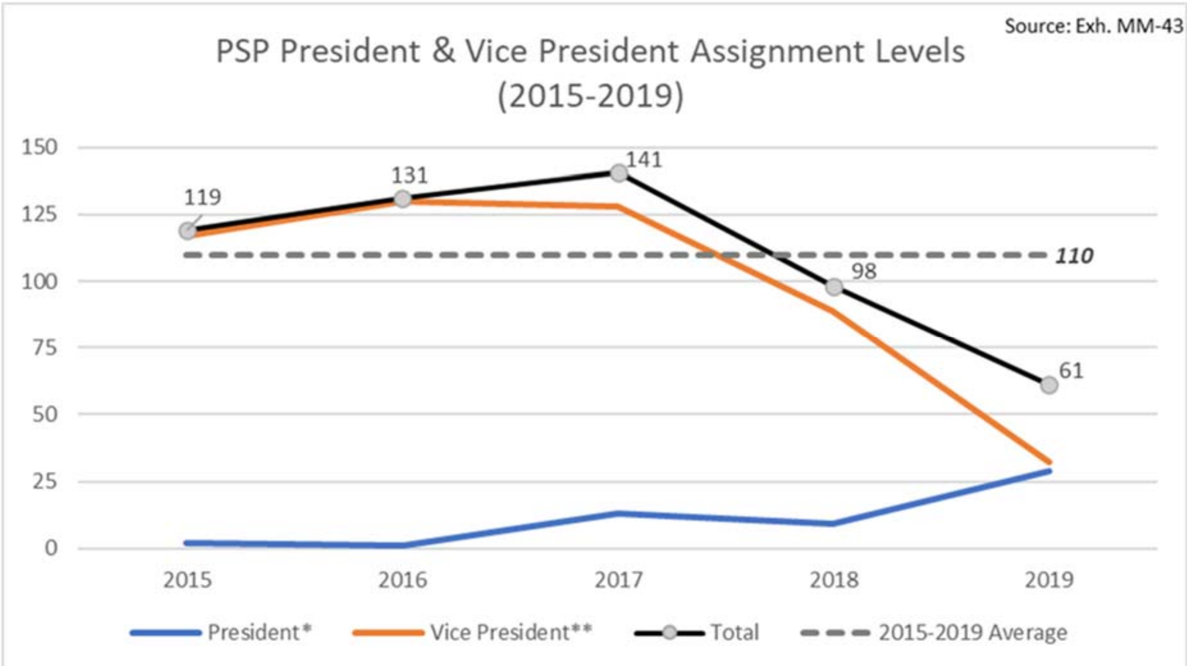
Q: Did Staff rely solely on the claims of PSP in its filings before the UTC to conclude that a non-working Vice President was reasonable?

A: Yes, Staff indicated that they relied on the PSP testimony that the positions of President and Vice President were suddenly so administratively burdensome that neither pilot could effectively be expected to perform assignments on the water and those representations were the basis for Staff's recommendation that these two positions not be included in the base number of pilot determinations. (Exh. SS-1T at 12 ("It is my understanding that both the president and vice president of the association have administrative duties which limit their ability to perform pilotage assignments.").)

Q: Is it historically accurate to see both the President and Vice President positions so impaired by administrative duties that both should be credited with compensation for performing no pilotage assignments as calculated by Staff upon the representations of PSP?

A: No. For most of the current tariff period, 2015-2019, the President and Vice President together averaged 110 jobs per year, as shown below. (Exh. MM-43.)

Figure QQ:



Q: During the current tariff period did the President and Vice President ever outperform the average annual assignment per pilot standard and actually complete more than a full pilot's share of assignments?

A: Yes, in 2017, during the current tariff period, the President and Vice President positions together completed 141 ship assignments. In 2017, the average annual assignments per pilot was 139 assignments (Exh. MM-20r). In other words, the two PSP officer positions that Staff is now proposing as doing no piloting actually outperformed the average pilot in workload for one year of the current tariff period.

Q: What changed in 2019 that resulted in the Vice President's performance of his piloting duties on the water to suffer such a dramatic drop?

A: The Vice President reported working 234 days on Administrative Tasks in 2019. (PSP Response to PMSA Data Request No. 26, Exh. MM-49 at 4-5.)

Q: What did PSP report that most of those tasks were?

A: Of the 234 days spent on Administrative Tasks that the Vice President reported in 2019, 161 of those days (68.8%) were reported to the BPC as "UTC" meetings. (Exh. MM-44.)

Q: Is it possible to confirm whether an administrative task "day" reported as "UTC" meetings were actually an entire day of meetings or only a subset of time of several minutes or hours each time an Administrative Task was logged?

A: No, it is impossible to determine from the documents submitted by PSP to the BPC that the Vice President spent any amount of significant time on each of the days listed as performing an Administrative Task. It could have been a full 8 hour day sitting in the office or at home pouring over spreadsheets, or, it could have been a 5 minute phone call with a witness to discuss testimony.

Q: Why is it important to know whether an administrative task "day" or a "meeting" was of a substantial nature or time?

A: PSP is now complaining of a pilot shortage and the need to license more pilots to avoid delays to ships and to minimize callbacks. The Vice President documented that, during the vast majority of work days when he could and should have been providing pilotage services to vessels, he instead spent a majority of his time, and many days in excess of his TAL, working in the office on administrative tasks, including over 160 days on the preparation of the PSP tariff revision filings which are the subject of this proceeding.

Q: Whether you agree or not with the proposition that the time spent by the Vice President in 2019 on Commission tasks was excessive, do you believe industry should be funding such a level of non-piloting administrative work by a fully licensed state pilot on a go-forward basis?

A: No, absolutely not. This is uniquely a situation of this being a case of first impression before the Commission. Especially considering the amount of resources being spent by PSP on attorneys and consultants that are proposed to be recaptured by an increased tariff, it is completely excessive to also have ratepayers pay for a future Vice President to do little or no work piloting under the authority of his state issued pilot license for years to come simply because in 2019, when PSP decided to dedicate an exorbitant level of active licensed pilot time and pilot resources to this single hearing, one Vice President spent 68.8% of his meetings time on the first filing with Commission and more than five times working on that task than he did on the water and servicing vessels. As noted by Staff with respect to UTC-hearing related attorneys' fees, these are not ongoing expenses. Moreover, there is no specific mention of the PSP Executive Director duties related to PSP's filings preparation. That position is highly compensated and does not hold a license and should be properly tasked with administering these types of functions and activities.

Q: How many administrative positions should be accounted for under the proposed tariff?

A: Only one licensed position should be accounted for as administrative under the proposed tariff: that of the PSP President, just as it has been for very many years. There are no substantive or ongoing limitations on the Vice President to perform pilotage assignments, the PSP By-Laws have not changed and designated more administrative duties to the Vice President (and even if they had been, that alone does not justify restricting pilot availability or increasing rates), and a majority of his administrative tasks were unique and one-time in nature as they had to do with this initial ratemaking proceeding. Pilots' primary job should be to pilot, period.

Q: Is the Staff recommendation for two administrative positions consistent with BPC accounting of pilot positions and one position for a non-working President?

A: It does not seem that this is treated consistently amongst the many calculations underlying the Staff recommendation. For instance, Staff calculations in Exh SS-2 Schedule 2.2 appear to have used rounded annual average assignment numbers that did not back out proposed President and Vice President assignments in determining an average assignment level for the rest of the pilots. Potential corrections could reduce the Staff-recommended number of pilots, some expenses, and potentially reduce the Staff's proposed revenue requirement increase. PMSA has already submitted several requests for clarification or recalculations on issues such as this for Staff consideration in data requests and appreciates that it has already received responses or a confirmation that the answers would be the subject of additional Staff cross-answering testimony. Upon completion and disclosure of all such revisions, we look forward to continuing to address such technical matters as these with Staff.

VI. THE STAFF PROPOSAL WOULD CREATE SIGNIFICANT RATE INCREASES FOR MANY VESSELS WHICH, IF ADOPTED, SHOULD BE PHASED IN OVER SEVERAL YEARS

Q: Do you agree with the Staff recommendation regarding the elimination a proposed multi-year phase-in of a proposed rate increase?

A: No. The Staff is proposing a completely new approach and rewrite of the format of the existing tariff which, if adopted, will have significant changes in rates for many vessels and produce many instances of "rate shock" which would not be expected by the vessels to which the new rates would be applied.

Q: How is the Staff proposal different from prior rate changes?

A: As Staff has described the prior process by the BPC, it was routinely "a standard approach of setting rates, using only an overall percentage increase or single line item changes only, was adopted by the Board." (Exh. DPK-1T at 6.) But in this Staff proposal "[t]here are no instances where Staff makes a recommendation that is consistent with the 'overall percentage increase' methodology or consistent with the 'single lite item charges only' methodology" (UTC Response to PMSA Data Request No. 1, Exh. MM-48 at 10).

Q: What does a departure from an "overall percentage increase" methodology mean for changes to pilotage rates?

A: Under the prior methodology changes were usually applied across the board in a manner that was simple to understand. Whether it was right or wrong, ratepayers understood that they all faced the same percentage increases even if that resulted in very disparate changes in the actual dollar figures. For example, if the BPC approved a rate increase of 3%, everyone could expect that they would be paying 3% more. By contrast here, both the PSP proposal and the Staff proposal would result in dramatically different restructurings of the tariff that result in dramatically different results for various sizes of vessels calling at various ports.

Q: What are some of the rate increase variations that vessels will experience under the Staff recommendation?

A: Ratepayers will potentially experience very large percentage swings in their pilotage costs as a result of the Staff recommendation, including pilotage costs that more than double for some assignments, as shown in Exhibit MM-45. For example, some of these changes include the following increases:

Figure RR:

Invoice No	Type	Hours	LOA (M)	Gross Tor	Current PSP Tariff	Current Total Tariff	Job Hours	UTC Staff Tariff	UTC % Diff Fm Current	UTC $ Diff Fm Current
178589	**BU**	**7.33**	**180**	**24184**	**$3,082.08**	**$3,233.08**	**8**	**$5,575.38**	**81%**	**$2,493.30**
183177	CC	7.37	184.07	45,121	4,192.35	4,358.35	8	**$6,517.55**	**55%**	**$2,325.20**
178882	RR	6.30	255.73	35,825	3,820.66	3,971.66	7	**$5,553.18**	**45%**	**$1,732.52**
183471	TA	3.67	183.20	29,242	1,907.30	2,043.30	4	**$3,270.79**	**71%**	**$1,363.49**
178744	GE	4.55	199.90	32,551	2,196.65	2,347.65	5	**$3,965.75**	**81%**	**$1,769.10**
179099	TA	6.75	204.20	14,935	2,083.50	2,234.50	7	**$4,493.05**	**116%**	**$2,409.55**
180919	TA	9.72	204.20	14,935	2,582.50	2,733.50	10	**$6,131.20**	**137%**	**$3,548.70**
181891	TA	6.92	183.06	28,160	2,591.72	2,757.72	7	**$4,705.75**	**82%**	**$2,114.03**
183871	OT	7.23	207.25	17,845	2,451.75	2,587.75	8	**$5,387.10**	**120%**	**$2,935.35**
179006	TA	6.47	183.12	29,785	2,736.50	2,887.50	7	**$5,281.38**	**93%**	**$2,544.88**
179416	CO	7.07	216.42	20,965	2,660.50	2,811.50	8	**$5,430.53**	**104%**	**$2,770.03**
183755	TA	9.93	209.70	14,514	2,811.75	2,947.75	10	**$6,131.20**	**118%**	**$3,319.45**
183500	GE	5.47	199.90	32,551	2,807.15	2,943.15	6	**$4,859.80**	**73%**	**$2,052.65**
179846	TA	9.47	144.22	11,908	3,988.00	4,139.00	10	**$8,131.20**	**104%**	**$4,143.20**
186049	TA	10.67	228.00	40,343	3,885.17	4,036.17	11	**$7,592.69**	**95%**	**$3,707.52**
178597	OT	9.72	32.00	332	1,834.75	1,985.75	10	**$6,479.20**	**253%**	**$4,644.45**
184349	CO	10.00	294.10	52,581	5,824.89	5,960.89	10	**$7,919.54**	**36%**	**$2,094.65**
Exh. MM-45 Sources: Exh. WTB-11, Exh. SS-2										

Q: Do you agree with Staff's conclusion that there is no need to phase in new rates over time because they "do not believe rate shock is an issue" if the Commission accepts the revenue requirement proposed by Staff?

A: No. Given the large percentage changes for some of these vessels, if the Staff proposal with a modified revenue requirement is adopted, a multi-year phase-in should also then be adopted and is wholly justifiable. As acknowledged by both PSP and Staff, the proposed tariff structure is a dramatic departure from the BPC's practice of only changing rates in relatively small amounts across the entire fleet, which except in several isolated incidences produced percentage tariff changes which were tempered and limited, so new changes that are dramatic and unexpected should also be phased in.

Q: Are there examples of BPC tariffs resulting in restructurings of the tariff that were small amounts across the entire fleet?

A: Yes, on one recent occasion stakeholders agreed to revenue neutral adjustments in part to address unfairly escalated charges to larger vessels, but these one-time adjustments were in line with the BPC's practice of making only relatively small adjustments in rates.

Q: What phase-in timeline would you recommend?

A: We would support a three-year phase-in for Staff recommendation, consistent with the phase-in period PSP proposed (Exh. WTB-1T at 14).

VII. PSP EXPENDITURES SHOULD NOT BE FULLY REIMBURSED WHEN THEY ARE UNJUSTIFIABLY OUT OF HISTORIC SPENDING RANGES OR NOT ESSENTIAL TO THE PROVISION OF PILOTAGE.

Q. Do you agree with Staff that it must contest many PSP proposed expense categories?

A. Yes. Staff "identifies five of PSP's proposed adjustments that are contested by Staff" (Exh. AMCL-1T at 2). PMSA joins in contesting these proposed expenses. Staff did not comment on expenses other than the five listed. PMSA agrees for the most part with Staff that many of these expenses are fairly non-controversial like boat fuel, station costs or most employee costs. However, PMSA has concerns about several other expenses and the lack of process to ensure expenses are essential to providing pilotage service and are correctly categorized as described in my original testimony (Exh. MM-1Tr) in addition to this cross-answering testimony.

Q. Do you agree with the Staff recommendation of "a revenue requirement increase of $2,705,242, based on the modified historical test year approach"? (Exh. AMCL-1T at 3.)

A. No. First, the proposed revenue requirement increase by Staff is based in part on DNI calculations which have been adjusted downward by revised calculations of Staff (see Exh. SS-2 and Exh. SS-2r). PMSA thanks Staff for reducing this recommended revenue requirement increase. With respect to the remaining "revenue requirement increase," PMSA is also contesting the conversion of the Vice President to non-piloting administrative duties and will further evaluate the total number of pilots used by Staff in their calculations, as articulated above, and the total expense levels as highlighted in our testimony and further discussed below. If further revised, PMSA would expect Staff's recommended revenue requirement would be further reduced, thus reducing the proposed rates.

Q. Do you agree with the Staff approach that "Staff's ratemaking approach reflects a historical understanding of pilotage ratesetting" (Exh. DPK-1T at 5) with respect to evaluation of PSP expenses and costs?

A: Yes, there needs to be a logical starting point. Without any use of or familiarity with historical data, it is hard to imagine how the Staff would establish a baseline for expenses without acknowledging the historical understanding of expense categories and levels and how they have been treated.

Q. Do you agree that Staff should use historical expenses to inform their assessment of proposed and pro forma expenses?

A. Yes. Staff states that "[t]o the extent possible, we continue to use the same rate-setting approaches used by the Board of Pilotage Commissioners ("BPC" or "Board") to provide regulatory consistency." (Exh. DPK-1T at 5.) Staff appropriately refers to historical observations of assignments, distributed income and some expenses and used historical data as part of their methodology to recommend a revenue requirement. PMSA supports use of such data to inform Staff recommendations.

Q: Did Staff consistently compare historical expenses with proposed expenses?

A: No, we are concerned that Staff did not fully or consistently utilize historical analysis of all expense data for all categories. A review of expense history and then comparison with proposed expenses helps to focus on significant changes that might present a red flag or point to the need for additional justification for new expenses. This will ultimately assist in accepting or rejecting expenses. This is particularly important in this first case before the Commission. As stated above, the BPC did not conduct a process of accepting or rejecting line items. Instead the Board required presentation of financials, prepared multiple year comparison spreadsheets to inform the Board and stakeholders of expense trends, and allowed significant presentations by stakeholders that included a discussion of justifications for expense category amounts and trends. PMSA recommends that a similar review be consistently applied to all expense categories deemed essential to the provision of a pilotage service in order to assist in determining whether an expense is essential or is excessive and should be rejected or modified.

Q: In what ways might ratepayers be impacted by a lack of effective evaluation of proposed expenses as essential to the provision of a pilotage service?

A: Without expenses being validated as to being essential to the provision of pilotage service, ratepayers will potentially be positioned by the decision in this proceeding to pay rates that in part pay expenses that are not necessary to providing pilotage service.

Q: Is the fact that the PSP Financials are audited an affirmation that PSP's expenses are essential to providing a pilotage service?

A: No, PSP's own auditor has provided no evidence of having conducted a performance audit or applied a basis for determining the need for spending, the appropriate level of spending, or the essential service supported by a PSP expenditure.

Q. Do you agree with Staff's reliance on PSP's auditor to validate whether individual expenses are essential to providing pilotage service?

A. No. PMSA has reviewed PSP financials in detail each and every year during the BPC ratesetting period. While the PSP financials are helpful in summarizing revenues and expenses and distributions cumulatively, the audit process does not document any effort to validate whether each "expense" is essential to providing pilotage service. The PSP auditor clearly states the audit focuses on obtaining "reasonable assurance about whether the special-purpose financial statements are free from material misstatement," and that audit procedures are not "for the purpose of expressing an opinion on the effectiveness of the entity's internal control," and accordingly the auditors "express no such opinion." (Exh. JN-04 at 3.)

Q. To your knowledge has the PSP auditor ever included a recommendation to disallow any expense or found any expenses to be excessive?

A. No.

Q. To your knowledge, have you or anyone at PMSA seen evidence of a performance audit by any entity, including the Board, that included evaluating each individual PSP expense category to determine if it was essential to providing pilotage service?

A. No, and that is why we included as one of our principal recommendations in our initial testimony the recommendation that the Commission direct that a performance audit of PSP be completed by Staff. (Exh. MM-1Tr at 141.)

A. Attorneys' fees and consultant costs should be limited.

Q. Does PMSA agree with the recognition and proposed Staff recommendation to bifurcate the treatment of attorneys' fees from this ratesetting proceeding?

A. Yes, PMSA appreciates Staff's recognition that the attorneys' fees for regular PSP operations must be broken out and treated separate and apart from PSP's Commission-specific legal costs. We agree that the Commission-specific legal costs are high and that the Staff recommendation is designed in part to recognize the long-term benefit to pilots and thus proposes spreading them out over two timelines. We endorse this treatment of spreading out these large legal fees but would also recommend additional adjustments to the Commission-specific legal fees.

Q: What other adjustments to Commission-specific legal fees that PMSA would like to see?

A: Given the outsized cost of these legal fees, we believe PSP should bear some percentage of the costs that represent some of the risk of not capturing the entirety of legal fees outside of the tariff. This should be done to provide PSP some incentive to manage costs.

Q. Do you agree with Staff recommendation to recapture the entirety of the balance of PSP's attorneys' fees?

A. No. The attorneys' fees for regular PSP operations greatly exceed the historical legal expenses for regular PSP operations. Historical legal expenses have relevance to determining an acceptable and reasonable level of legal expenses when compared to the level proposed by PSP for recovery through the tariff because it raises the question of whether or not the fees are necessary and essential for the purposes of providing pilotage services. For instance, PMSA has observed PSP ramping up their legal expenses by using attorneys to act on its behalf on operational issues: principally, PSP now sometimes uses attorneys to speak on its behalf before the Board of Pilotage at regular monthly meetings and some Board established committee meetings on workload matters. The expense for legal representation on such matters is occurring despite the fact that ratepayers are paying PSP for a President that doesn't pilot often and a highly compensated Executive Director, both of whom occupy positions that have historically spoken for PSP. This is also in addition to two pilots serving on the Board and often another pilot or two in attendance at Board meetings as well. There needs to be a check and balance on the cost recovery for attorneys' fees or we run the risk of an incentive for PSP to lawyer up on everything and seek Commission concurrence to raise tariff rates to pay for it under the blanket justification of being essential to the provision of pilotage service regardless of how unnecessary the legal expenses are.

Q. Do you agree with the Staff's recommended reimbursement of expenses for consultants?

A. No. Staff and PMSA submitted data requests about expenses including specifics regarding consulting. The responses from PSP included information not previously available to PMSA. While some consulting fees are defensible, there are others that appear to be questionable and require additional inquiry into their justification.

Q: Which consulting fees might require additional justification?

A: Among the list of consulting fees which raise concerns and suggest an inquiry are potential nepotism regarding 12 different payments to a consultant which has the same name as the daughter of the Executive Director for services that are not specifically articulated in the summary and three payments to a consultant with the same last name as a licensed pilot. (Exh. AMCL-11 at 1.) The Commission and stakeholders including PMSA have no way of evaluating whether these and other consultants like Heaven Scent Films (Exh. AMCL-11 at 1) were essential to providing pilotage service and if the value of such services was appropriately priced.

Q: How does PMSA propose to evaluate if consultant services are appropriate?

A: In my primary testimony, we proposed that the Commission conduct a full audit of PSP expenses. (Exh. MM-1Tr at 141.) Our expectation is that Staff would have the opportunity to dive into all expenses beyond the self-styled audit of unique PSP financials to evaluate whether an expense is appropriate based on whether or not it is essential to the provision of pilotage services. As stated earlier, to the best of our knowledge, no performance audit has ever taken account of PSP operations, so they are under no spending scrutiny other than their current Auditor spot checking invoices to evaluate if the tariff was being properly applied and that there are no material misstatements in the representation of their spending. PMSA has no indication that any audit of PSP financials has ever resulted in a finding that any expense wasn't acceptable. PMSA fully supports whatever effort is necessary by Staff to ensure every expense is warranted prior to authorization for reimbursement by tariff revenues particularly when setting what might be considered a pilotage rate baseline with significant downstream implications.

B. Entertainment, sponsorship, and promotion costs should not be included in the revenue requirement.

Q. Do you agree with sponsorships and promotion expenses being included in the formula for recovery through the tariff?

A. No. PSP is a monopoly in a compulsory pilotage ground made up of individual pilots' corporate entities, so we consider nearly all of these sponsorship, marketing, and promotional expenses to be superfluous to conducting the business of pilotage. While Staff recommends $66,154 for travel and entertainment, we fundamentally question whether most of the examples listed in Exh. AMCL-8 are appropriate expenses for the provision of pilotage by PSP and if they would not be more appropriate if spent by individual pilots post-distribution of revenues.

Q: By what standard should the Commission evaluate if expenses should be borne by PSP or by an individual pilot post-distribution?

A: PMSA would invite the Commission to inquire whether it is the ratepayers or PSP's members who benefit from PSP sponsoring a golf tournament or drink cart, buying gifts, contributing to a fundraising gala of a group that supports their tariff increase efforts, or spending $14,048.76 on a PSP Christmas party. (Exh. AMCL-8.) Since these add no value to the provision of pilotage services, these expenses should come out of the individual post-distribution income of pilots. Vessels should not be required to fund these non-essential activities through the tariff. Business lunches under entertainment can be acceptable if not excessive and if focused on actual pilot service issues. However, without detailed scrutiny of such expenses, and the implementation of a process to prevent such expenditures from working their way into tariff increases to ratepayers, it is very difficult to justify such non-essential activities.

C. Lease expenses must be evaluated and reconciled given the significant disparities between the PSP test year, the PSP financials, and Staff recommendations.

Q. Do you agree with the proposed lease expenses of Staff?

A: No. Staff accepts Mr. Burton's listing of $339,108 for Office Equipment Leases which he simply repeats for Year 1, Year 2 and Year 3 (Exh. WTB-03, WTB-04 and WTB-05). Yet, when one considers the PSP auditor's report (Exh. JN-04 at 17) (providing a schedule of "lease payments for non-cancelable operating leases with a term greater than one year as of December 31, 2018"), that schedule indicates a reduction of $271,049 from 2019 levels down to $144,838 in 2021. Further, the auditor states that the operating lease for PPU's of $198,826 in 2018, the first year obtained, will end in less than one year, on June 30, 2021. We recommend a review of this expense and reconciliation and the avoidance of continuing an expense in perpetuity despite reporting and forecasting a significant decrease in this expense category.

D. PSP agreement to fund "pension other" costs should not obligate vessels to pay for past services provided by former employees.

Q. Do you agree with Staff that the "pension other" expense category is an appropriate expense to include in the tariff?

A. No, to the extent that this is the current payment of additional retirement benefits to the former executive director, PSP is asking current vessels to pay for the administrative costs received, and paid for, by prior vessels. This is a double charge against vessels and should be disallowed. The former Executive Director was not a captain or pilot, had a small number of employees to supervise, and was a highly compensated employee with a 401(k) per past PSP financials. If he had a further retirement obligation agreement with PSP, PSP should have fully funded that agreement at that time and, if it failed to do so, this should not be paid out of current revenues.

E. Expense calculations which vary with the number of pilots should be based on the actual number of pilots.

Q. Do you agree with Staff responses that certain expenses should be based on 47 pilots plus 6 trainees?

A. No, trainees are not licensed pilots and should not be treated as pilots for purposes of establishing expenses other than the pass-through surcharge primarily to fund their stipends. While PMSA finds that number significantly more accurate than PSP's submission requesting more than 61 pilots to be utilized when setting the tariff, there is no basis set for the conclusion of how many trainees will be licensed at any future time. Trainees are not guaranteed to be licensed in a specific amount of time, and it is also just as likely that retirements of existing pilots outpace licensing of new pilots. There should not be an automatic presumption of a level of expenses based on a number of future licensees based solely on the number of trainees currently in the training program. To avoid the vagaries and variables of the timing of trainee licensing and licensee retirements in the future, we recommend revisiting PSP expenses and projected expenses that are specifically variable with the number of pilots by applying the number of actual pilots. If Staff calculations are using 53 to match with Staff rate structure calculations of 50.98 plus two non-working administrative pilots, then we request Staff recalculate number of pilot related expenses with a potentially corrected number by Staff.

Q. To your knowledge, do trainees pay license fees, get medical coverage and disability allowances in addition to a training stipend as if they were already licensed pilots?

A. No, not to my knowledge.

Q. To your understanding does this issue with the number of pilots also justify the significant increase in medical expenses proposed by PSP?

A. It is unclear whether Staff is justifying the increased medical expenses proposed by PSP on this basis. We had presumed that with fewer actual pilots the total medical coverage expense would decrease more than any increases in premiums. Yet, the proposed expense is considerably more than was reported in the 2018 financials and is, interestingly, much more than the individual medical expenses for PSP employees. As noted above, with respect to medical expenses, the number of newly licensed pilots should be at least partially offset by retiring pilots.

F. BPC's gender discrimination settlement premium insurance charges should not be paid twice by ratepayers. Commission should maintain the Legislature's and BPC's explicit cost-sharing formula.

Q: Do you agree with the Staff recommendation that the pilots should be able to pass off to pilotage customers the costs of the insurance premiums that pilots have been directed to pay to the State of Washington associated with the BPC's settlement of a gender discrimination lawsuit?

A: No, PMSA's position is that vessels should not have been paying any part of the costs of the gender discrimination settlement in the first place, as shown in the letter that is Exhibit MM-46. Vessels were not a party to the case, vessels had nothing to do with the administration of the BPC training program, and vessels should not have been paying for the state's overhead if that is also not a part of the delivery of the pilotage service, which it is not here.

Q: Have the costs of the state's gender discrimination lawsuit premiums been paid by pilotage customers already in the current tariff despite PMSA's protestations that it is not a cost related to the provision of pilotage services?

A: Yes, the final calculus of how to repay the state for the liability associated with the BPC gender discrimination lawsuit settlement was stipulated by Senate Bill 5096, adopted on May 18, 2017, whereby the insurance premium payments were paid in part by vessels directly levied a surcharge of $16 per assignment on all pilot assignment invoices. The other stipulated conditions of the Board's payment of self-insurance liability premium expenditures were that PSP shall pay from its tariff proceeds $150,000 annually and that the tariff should be frozen, so as not to be increased to otherwise create new revenues to PSP that would offset the $150,000 charge, as that would effectively transfer the full weight of the premium payment to vessels and circumvent the legislative intent of bifurcating the charges.

Q: How did the BPC implement the bifurcated charges required by the Legislature with respect to self-insurance premium payments resulting from the gender discrimination lawsuit?

A: The BPC adopted a new section of the WAC 363-116-301 in order to implement SB 5096's provisions. As described in the BPC Public Hearing minutes of the meeting of September 21, 2017 (provided at Exhibit MM-47), WAC 363-116-301 was adopted in order to effectuate the SB 5096 requirements: these included "certain conditions in order for the Board to receive a transfer of funds from the State Multimodal Transportation

Account solely for self-insurance liability premium expenditures. The three stipulated conditions are 1) Puget Sound Pilots shall pay to the Board, from its tariffs, one hundred fifty thousand dollars annually on July 1, 2017, and July 1, 2018; 2) The Board shall maintain the Puget Sound Pilotage District Tariff at the rate which became effective on January 1, 2017; an.d 3) A self-insurance premium surcharge of sixteen dollars shall be added to each Puget Sound pilotage assignment on all vessels requiring pilotage in the Puget Sound Pilotage District." (Exh. MM-47.)

Q: How does PMSA view the Staff recommendation that vessels should pay PSP's $150,000 payment for self-insurance liability premium expenditures in addition to the $16 per assignment self-insurance premium surcharge?

A: PMSA is opposed to this recommendation. Vessels should not be paying the underlying $16 per assignment premium, which is a cost which does not provide any additional or beneficial service to vessels, to begin with. But now vessels are being told that they need to pay twice. This is wrong. The Legislature has already created two separate and distinct revenue streams to help the BPC to cover the costs of its self-insurance premiums as a result of the gender discrimination lawsuit and in so doing the full cost of this situation was not to be passed along to pilot customers. As specifically referenced by the BPC hearing on the implementation of the self-insurance premium charges, the $150,000 from PSP is intended to come from its regular tariff revenues separate and apart from the surcharges collected from vessels.

Q: Should the Commission deviate from the bifurcated revenue streams already established by the Legislature and adopted by the BPC as enunciated in WAC 363-116-301 in order to implement SB 5096?

A: No. Indeed, if there's one place that the BPC's recent ratesetting functions and policies are explicit, and most definitely not a "black box," it is the actions taken surrounding SB 5096 charges. Given the Staff recommendation to maintain regulatory continuity, then it should not recommend a deviation from these well enunciated and understood cost-shares. Consistent with BPC and legislative directive, PSP should continue to pay its $150,000 share of BPC self-insurance premiums out of its own tariff revenues and vessels should continue to pay their $16 per assignment share of BPC self-insurance premiums over and above regular tariff revenues.

VIII. RATEPAYERS AGREE THAT PSP CALLBACK AND RETIREMENT COSTS ARE INTERNAL COSTS THAT MUST NOT BE EXTERNALIZED TO THE TARIFF TO SUBJECT VESSELS TO A DOUBLE CHARGE

Q: Do you agree with the Staff that "it is important for Staff to put on the record its opposition to any attempt to double collect for services performed in a prior period." (Exh. DPK-1T at 19)?

A: Yes, we agree with Staff that adding additional charges to the tariff for callback days would be an inappropriate double charge for services already rendered.

Q: Do you agree with Staff that "even though the idea that call back days are unfunded has been accepted as true over the years, the assertion is wrong. The moment the pilot moved the ship and the ship owner was charged for the ship movement; the call back was fully funded. Stated another way, because the ship owner has already paid for the ship movement, i.e., the service, there is no basis for an additional charge simply because the pilot called back decides to defer the use of it to retirement" (Exh. DPK-1T at 14)?

A: Yes, we agree that when a vessel pays a pilot for a service under the tariff at the time the service is rendered that the pilot has been fully compensated at that time, regardless of how the PSP By-laws treat the subsequent distribution of the revenues generated by that vessel.

Q: Do you agree with Staff's analysis that "clearly shows there is no obligation to fund call back liabilities, further than the amount already received for services. The liability was incurred, and the revenue earned, when the pilot accepted the call back assignment and the service was performed. Any remaining obligation if the obligation of PSP to one of its pilots and should be 'below the line,' that is, outside of regulatory consideration." (Exh. DPK-19)?

A: Yes.

Q: Do you agree with Staff that there are fundamental "concerns as to the long-term viability and sustainability of PSP's retirement plan if the status quo is accepted" (Exh. DPK-1T at 22)?

A: Yes, PMSA has raised concerns regarding the lack of long-term viability and sustainability of PSP maintaining an unfunded, defined benefit retirement system.

Q: Do you agree with the Staff in their rejection of the "suggest[ion] that revenues collected from higher rates charged to the maritime industry are somehow contributions from current active pilots" when, in fact, "clearly they are not" (Exh. DPK-1T at 23)?

A: Yes.

Q: Do you agree with the Staff that a component of the solution to the improvement of the viability of the current PSP retirement program must be “that any proposed plan include some discussion of the reestablishment of retirement fund contributions by active pilots” (Exh. DPK-1T at 24)?

A: Yes, PMSA agrees with Staff that the first step towards improving the sustainability of the PSP Retirement Plan is that the pilots must invest their own distributions of pilotage revenues in their own private plan in order to reduce unfunded liabilities.

Q: Do you agree with the Staff’s recommendation “that the Commission order PSP to initiate discussions to develop a plan that will provide a transition to a fully funded, defined benefit retirement plan. Such a plan will provide security and confidence in the long-term viability of the promised retirement benefits to current and future pilots” (Exh. DPK-1T at 24)?

A: Yes, PMSA supports this Recommendation so long as the discussions are broader than just how to address the transition to a funded defined benefit plan, but instead represent an opportunity for a dialogue that puts all retirement options on the table. We believe it is important for all stakeholders to have an honest dialogue brokered by Commission about the nature, extent, and scope of the actual retirement issues and where the true costs and benefits of the current system lie and how to resolve the lack of funding issues equitably for everyone.

IX. CONCLUSION

Q. Does this conclude your cross-answering testimony?

A. Yes.