Service Date: November 25, 2020

**BEFORE THE WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION**

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION, Complainant, v. PUGET SOUND PILOTS, Respondent.	DOCKET TP-190976 ORDER 09 FINAL ORDER REJECTING TARIFF SHEETS; AUTHORIZING AND REQUIRING COMPLIANCE FILING

Synopsis*: The Commission rejects the tariff sheets filed by Puget Sound Pilots (PSP) on November 19, 2019. The Commission approves a two-year rate plan that authorizes a revenue requirement of $35,882,859 in year one and a revenue requirement of $36,308,428 in year two, which represents a revenue increase of approximately 2.7 percent in the first year and an additional 1.3 percent in year two. The Commission requires PSP to file revised tariff sheets to reflect these decisions.*

The Commission adopts Commission Staff's (Staff) proposed revenue requirement formula and adopts Staff's projected number of vessel assignments for the first year of the rate plan and adopts Staff's average assignment level for rate setting purposes only. The Commission approves 50 funded full-time equivalent (FTE) pilots in year one and 52 FTE pilots in year two. The number of funded pilots in each year includes one administrative pilot, which is allocated for PSP's president. The Commission denies PSP's request to fund an additional administrative pilot for PSP's vice president because PSP failed to provide sufficient evidence to justify the need to utilize a second pilot to perform primarily or exclusively administrative duties.

The Commission further determines that PSP failed to provide sufficient data to support its comparability analysis, failed to establish that compensation levels are set too low to attract or retain qualified candidates, and failed to prove that its proposed distributed net income (DNI) of $500,000 will result in rates that are fair, just, reasonable, and sufficient.

The Commission finds that Staff's proposed DNI, which is based on an historical five-year average adjusted for inflation, will result in rates that are fair, just, reasonable, and sufficient. The Commission thus authorizes a DNI of $400,855 per FTE pilot, consistent with Staff's recommendation, in year one. This results in a total DNI (TDNI) of $20,042,750. In year two, the Commission authorizes a one-time DNI increase of 2.3 percent to provide a cost of living adjustment based on the Consumer Price Index for All Urban Consumers as established by the U.S. Bureau of Labor Statistics, which results in a DNI of $410,075 per FTE pilot and a TDNI of $21,323,883 in year two.

The Commission adopts Staff's proposal to maintain for purposes of this case PSP's current pay-as-you-go retirement program, but orders PSP to initiate discussions for the purpose of developing a plan to transition to a fully funded, defined-benefit retirement plan and to implement full accrual accounting for retirement expenses. To facilitate this transition, PSP is required to (1) conduct a comprehensive stakeholder evaluation and participation study, and (2) address whether active pilots should be required to contribute directly to PSP's retirement fund. These discussions should be conducted as a series of workshops facilitated by a mutually agreeable third-party, such as an actuary, and should be concluded prior to PSP's next general rate case. Any agreements, recommendations, or contested issues that arise from the workshops should be included in PSP's initial filing in its next general rate case.

We decline to adopt the Pacific Marine Shipping Association's (PMSA) recommendations to require PSP's retirement plan participation study to consider outcomes other than a defined-benefit plan, and decline to exclude from rates at this time a $70,000 annual retirement payment to PSP's former executive director.

The Commission determines that funding callback days in the revenue requirement would result in ratepayers being double charged. The Commission instead adopts Staff's proposal and requires PSP to use the accrual accounting method based on Generally Accepted Accounting Principles to defer the revenue from a callback assignment to properly attribute the costs to the vessel served by those expenses.

The Commission accepts PSP's proposed restating adjustment for medical insurance expenses for PSP employees, but directs PSP to transition to a structure that requires pilots to fund their own medical insurance expenses through DNI using a phased-in approach. In year one of the rate plan, PSP may continue to include pilot medical insurance expenses in its revenue requirement. In year two of the rate plan, PSP may include only 50 percent of the value of pilot medical insurance expenses in its revenue *requirement, and the remaining 50 percent must be accounted for as pilot compensation and paid from pilot DNI.*

We decline to adopt PSP's proposed adjustment to transportation expenses, finding that the proposed adjustment would impose unreasonable additional costs on ratepayers. Instead, we adopt Staff's and PMSA's recommendation to maintain PSP's current transportation charges and accept Staff's adjustment to PSP's transportation expenses.

We accept PSP's restating and pro forma adjustments for legal expenses and adopt Staff's recommended amortization periods. PSP is thus required to amortize 50 percent of its legal expenses over a three-year period, and the remaining 50 percent over a seven-year period.

The Commission rejects PSP's proposal to recover $150,000 in self-insurance expenses because the governing statute holds PSP, not ratepayers, responsible for these expenses. PSP is authorized to recover from ratepayers, on behalf of the Board of Pilotage Commissioners, a $16 surcharge per pilotage assignment, as required by statute, but nothing more.

We accept Staff's proposed adjustments to consulting fees, which separate those fees attributable to this general rate proceeding from test period expenses, amortize 50 percent of the rate case-related consulting fee expenses over three years, and amortize the remaining 50 percent over seven years. We similarly accept Staff's proposed adjustment to PSP's depreciation expense, which removes the Puget Sound vessel from test period depreciation expense, adopts a four-year depreciation schedule for the Juan de Fuca vessel based on the vessel's remaining life, and removes eight assets from PSP's depreciation schedule.

The Commission accepts Staff's proposal to remove a $4,324 expense for uniforms from PSP's adjustment to entertainment and travel expenses. The Commission accepts PSP's proposed expense for office equipment leases, as well as its proposed adjustments for pilot license fees and conferences, finding that each is reasonable.

The Commission adopts PSP's proposed tariff structure but requires PSP to apply standard hourly rounding rules as PMSA recommends.

We decline to adopt Staff's proposed rate design, which would result in rate shock for smaller vessels by producing rate increases as high as 234 percent. We agree with PSP *that Staff's proposed service time charge fails to capture adequately the skill level required to safely maneuver larger vessels.*

We accept each of PSP's 20 uncontested restating and pro forma adjustments, finding that each is adequately supported by the record and should be approved without condition. We also grant PSP an exemption from the tariff filing requirements in WAC 480-160-110 and WAC 480-07-525(2) to allow PSP to file its revised tariff pages without marking changes in legislative format. As an alternative, PSP should file its previously effective tariff as an attachment to its revised tariff for comparative purposes.

The Commission declines to adopt PMSA's recommendations to (1) order PSP, Staff, and stakeholders to continue to address issues of pilot staffing, expenses and administrative review, and competitiveness, (2) require a performance audit of PSP's books and operations, and (3) issue a policy statement on the application of the Pilotage Act to Commission regulation.

The Commission accepts PMSA's recommendations to require PSP, Staff, and other stakeholders to conduct a Staff-led technical workshop to address rate of return methodology in the context of setting rates for pilotage service, as described in the body of this Order. We also accept PMSA's recommendation to convene public comment hearings in subsequent general rate proceedings.

Finally, we decline to require PSP to file a separate tariff for foreign-flagged recreational vessels, as Pacific Yacht Management (PYM) requests, finding that the Board of Pilotage Commissioners is the proper regulatory authority to grant exemptions from compulsory pilotage.

TABLE OF CONTENTS

I. BACKGROUND

A. PROCEDURAL HISTORY

1 On November 19, 2019, Puget Sound Pilots (PSP) filed with the Washington Utilities and Transportation Commission (Commission) its initial proposed tariff. On November 21, 2019, the Commission entered Order 01, suspending the tariff filing and setting the matter for adjudication.

2 On December 17, 2019, the Commission entered Order 02, Prehearing Conference Order; Notice of Hearing (Order 02). Among other things, Order 02 granted a petition to intervene filed by Pacific Merchant Shipping Association (PMSA) and established a procedural schedule.

3 On January 14, 2020, Pacific Yacht Management (PYM) submitted a late-filed petition to intervene. On January 31, 2020, the Commission granted PYM's petition on the basis that PYM meets the statutory definition of "a person with a substantial interest" because it contracts with PSP on behalf of its clients.

4 On March 26, 2020, PSP filed a Request for an Extension to the schedule in Order 02 on behalf of the parties seeking to extend by six weeks all scheduling deadlines, including the tariff suspension date, due to the impact of the COVID-19 pandemic on the availability of resources and parties.

5 On March 31, 2020, the Commission entered Order 04, Granting Motion to Extend Suspension Date; Modifying Procedural Schedule. Order 04 set an evidentiary hearing for August 12 and 13, 2020.

6 On May 6, 2020, PMSA filed a Request for Continuance of Proceedings, which the Commission denied by Order 05 on May 12, 2020.

7 On May 27, 2020, Commission staff (Staff) and PMSA filed responsive testimony. PYM filed responsive testimony on June 2, 2020.

8 On June 25, 2020, PSP filed a Motion to Strike testimony offered by Capt. Michael Moore on behalf of PMSA. The Commission denied the Motion by Order 06 on July 21, 2020, concluding that any evidence that may assist the Commission in its evaluation of this case of first impression should be admitted and accorded weight based on its relevance and reliability.

9 On June 26, 2020, Staff filed supplemental testimony.

10 On July 13, 2020, PSP filed rebuttal testimony, and Staff and PMSA filed cross-answering testimony.

11 Also on July 13, 2020, PMSA filed a Motion for Summary Determination.

12 On July 22, 2020, PMSA filed a Motion to Strike Rebuttal Testimony offered by Dr. Robert Leachman, Capt. George Quick, and Capt. Ivan Carlson on behalf of PSP.

13 On July 30, 2020, Staff filed a Request to Extend the Discovery Cutoff. On July 31, 2020, the Commission entered Order 07, denying Staff's request for extension, and requiring responses to existing data requests. The Commission found that extending the discovery deadline until two business days prior to the evidentiary hearing, as Staff requested, would be unduly burdensome to the parties. The Commission nonetheless extended the discovery deadline by one business day and instructed PSP to respond to Staff's data requests to which it objected, finding that the information sought will be useful to the Commission.

14 On August 7, 2020, the Commission entered Order 08, Denying Motion for Summary Determination and Denying Motion to Strike Rebuttal Testimony (Order 08). Order 08 concluded that PSP provided sufficient evidence to raise genuine issues of material fact, that the Commission will defer consideration of any clerical deficiencies in the proposed tariff until the Commission enters its final order in this Docket, and that any evidence that may assist the Commission in its evaluation should be admitted and accorded weight based on its relevance and reliability.

15 The Commission convened a virtual evidentiary hearing before the Commissioners and Administrative Law Judges Rayne Pearson and Michael Howard on August 12 and 13, 2020. The Commission admitted into the record all pre-filed testimony and exhibits, as well as all cross-examination exhibits.

16 The Commission received two public comments, both of which were filed by persons who represent various aspects of the recreational vessel industry, the Northwest Marine Trade Association, or NMTA, and S3 Maritime.

17 The NMTA describes itself as the largest marine trade association with 735 member businesses, including PYM. NMTA expresses concerns that increasing pilotage rates for recreational vessels would create a disincentive for recreational vessels to seek service in Puget Sound. Additionally, NMTA argues that additional costs will deter recreational

vessels considering current economic circumstances created by the COVID-19 pandemic, which may negatively impact Washington state. NMTA opposes any increase to current pilotage rates.

18 S3 Maritime states that it services recreational vessels, many of which are subject to compulsory pilotage, and argues that increasing pilotage rates would deter recreational vessels from seeking services in Puget Sound. S3 Maritime argues that a single vessel may spend $50,000 per visit to Washington, and that a loss of even a single vessel because of increased pilotage rates is unacceptable.

19 On September 10, 2020, the parties filed initial post-hearing briefs.

20 On September 25, 2020, the parties filed reply briefs.

21 David Wiley and Blair Fassburg, Williams Kastner, Seattle, Washington, represent PSP. Sally Brown and Harry Fukano, Assistant Attorneys General, Lacey, Washington, represent Commission Staff.[1] Michelle DeLappe, Fox Rothschild LLP, Seattle, Washington, represents PMSA. Monique Webber, Yacht Agent, Seattle, Washington, represents PYM, *pro se.*

B. CASE OVERVIEW

22 In its initial filing, PSP requests the Commission approve a three-year rate plan, structured as an initial increase on the date the revised tariff becomes effective in 2020, a second increase exactly one year later in 2021, and a third increase exactly two years later in 2022.[2] The Company bases its requests on a modified historical 12-month test year ending June 30, 2019.[3] PSP relies on revenue growth rates as the basis for its incremental increases in each year of the proposed rate plan.

23 PSP's multi-year rate plan would result in a total revenue increase of 39.89 percent ($48,027,598) over the three-year rate plan period.[4] The first proposed revenue increase

---

[1] In formal proceedings such as this, the Commission's regulatory staff participates like any other party, while the Commissioners make the decision. To assure fairness, the Commissioners, the presiding administrative law judges, and the Commissioners' policy and accounting advisors do not discuss the merits of this proceeding with the regulatory staff, or any other party, without giving notice and opportunity for all parties to participate. *See* RCW 34.05.455.

[2] Moreno, Exh. SM-1T at 9:21.

[3] Burton, Exh. WTB-1T at 6:16-18.

[4] Tabler, Exh. WT-1T.

is $9 million, or 26.4 percent. For the second year of the rate plan, PSP proposes an additional revenue increase of $3.5 million, or 8.1 percent. PSP proposes a final increase of $1.1 million, or 2.34 percent, in the third and final year of the rate plan.[5]

24 PSP's proposed revenue requirement comprises the following components:

- **Retirement Program**
  PSP currently has a self-administered, pay-as-you-go, defined-benefit retirement program.[6] Pilots earn 1.5 service credits per year of active pilot service.[7] Retirement disbursements are calculated by multiplying the total number of service credits, as a percentage, with the pilot's average income for the final three years of service before retirement.[8] The funding required to cover the retirement payments for the current year is based on a financial audit of the prior year's retirement expenses.[9] Statutory language places the financial liability for the retirement program with PSP.[10] PSP presents an actuary as an expert witness, Steven Diess, who testifies that he performed an actuarial analysis of the program and concluded that it is both low-risk and feasible into the foreseeable future.[11]

- **Callback Days**
  Individual pilots must be available for 15 consecutive days (24 hours per day), referred to as being "on call," followed by 13 days off-duty, referred to as being on "respite."[12] Statutory rest rules may limit the amount of time pilots are allowed to work when on-call.[13] However, during peak traffic times, when no on-call pilots are available, vessel movements are offered to pilots on respite. When pilots take assignments during respite they receive two days of compensatory time, or

---

[5] The year-two and year-three revenue increase of the proposed rate plan is implemented through separate Tariff Schedules (Burton, Exh. WTB-09 and Exh. WTB-10, respectively), and not through a change to base tariff rates. Burton, Exh. WTB-1T 14:7-18.

[6] Tabler, Exh. WT-1T at 2:18.

[7] Quick, Exh. GQ-1T at 22: 22.

[8] *Id.* at note 3.

[9] Tabler, Exh. WT-1T at 7:16.

[10] *Id.* at 16:8-9, 18:15-19.

[11] Diess, Exh. SD-1T at 6:1-4.

[12] Carlson, Exh. IC-1T at 5:7-11.

[13] *Id.* at 5:16-19.

"callback days," for each assignment taken.[14] These callback days are available for pilots to use as leave during periods when they would otherwise be on-call, or they can be accumulated, without limitation, and then "burned" consecutively until retirement (referred to as "burning callback"). During the callback "burning" period, individual pilots may either keep or surrender their license.[15] In instances where a pilot opts to keep their license, an additional assignment burden is placed on the remaining pilots because the total number of pilots available for duty is reduced despite continued salary expenses. The option to "bank" or "burn" callback has resulted in an unrecorded liability of approximately $7 million.[16] PSP proposes that this practice continue but that the Commission incorporate the unrecorded liability into the revenue requirement.

- **Recruitment**
  PSP argues that pilot compensation is a major factor in pilot recruitment and retention.[17] PSP further argues that the job market for pilot trainees is highly competitive, and that candidates are often placed on waitlists for several pilotage districts. PSP provides with its filing a comparative analysis of pilot income in various pilotage districts based on limited publicly available data.[18]

- **Travel reimbursement**
  Under PSP's current tariff, pilots are reimbursed for travel based on the geographic location of the assignment. PSP proposes changing its transportation charge to a flat reimbursement rate, based on its three-month transportation study, regardless of location. PSP argues this change eases the administrative burden of calculating travel reimbursements based on location.[19]

- **Service Time Charge**
  PSP proposes a new Service Time Charge in its proposed tariff. The Service Time Charge consists of an hourly rate that begins at the time the vessel requests movement to commence or continue and concludes when the pilot steps ashore.

---

[14] Carlson, Exh. IC-2.

[15] Carlson, Exh. IC-1T at 14:6-14.

[16] Norris, Exh. JN-1T at 2:19-21.

[17] Quick, Exh. GQ-1T at 19:1-6.

[18] Carlson, Exh. IC-3.

[19] Burton, Exh. WTB-1T at 9:5-13.

PSP argues that time-based charges, in addition to the tonnage-based charge, enhance the accuracy of vessel charges for the time pilots spend working.[20]

- **Pilot Workload and Vessel Forecast**
  PSP also proposes that the tariff establish a maximum assignment workload of 118 vessel assignments per pilot, per year.[21] To support its proposal, PSP conducted a vessel forecast for the 2020 rate year period, which it used to estimate a projected total number of assignments, establish a DNI, and define the level or workload per pilot as the number of vessel assignments. PSP argues that projected sales in a traditional regulated ratemaking case are synonymous with projected number of assignments.[22] According to PSP, the vessel forecast relies on numerous explanatory variables including macroeconomic indicator data, fuel pricing data, data on global average container ship size, historic traffic by vessel type, macroeconomic forecasts, global average tanker size, China's GDP, Japan's GDP, the U.S. GDP, the price of No. 2 diesel fuel at the Port of Los Angeles, the labor price for marine cargo handling, the U.S. industrial production index, and the total value of U.S. imports from China.[23]

25 PSP proposes rates based on gross tonnage of vessels, as well as a service time charge of $326 per hour. Additionally, rates are further broken out by harbor shifts and inter-harbor vessel movements. In addition to the tonnage rates, PSP proposes numerous additional charges for each assignment, including pilot boat charge, transportation charge, cancelation charge, delay, detention, standby, and other.

C. SUMMARY OF REVENUE REQUIREMENT DETERMINATIONS

26 The Commission approves a two-year rate plan to implement the revenue requirement increase authorized by this Order. In the first year of the two-year rate plan, the Commission authorizes a revenue requirement of $35,882,859, which represents an increase of approximately 2.7 percent. The Commission funds 50 FTE pilots and authorizes a distributed net income (DNI) of $400,855 per FTE pilot, for a total DNI (TDNI) of $20,042,750.

---

[20] Moreno, Exh. SM-1T at 12:12-25.

[21] Khawaja, Exh. SK-1T at 19:16-17.

[22] *Id.* at 3:4-6.

[23] *Id.* at 13:14-15, 14:1-10.

27 In the second year of the two-year rate plan, the Commission authorizes a revenue requirement of $36,308,428, which represents an additional increase of 1.3 percent, and funds 52 FTE pilots. The Commission authorizes a one-time DNI increase of 2.3 percent to provide a cost of living adjustment based on the Consumer Price Index for All Urban Consumers as established by the U.S. Bureau of Labor Statistics, which results in a DNI of $410,075 per FTE pilot and a TDNI of $21,323,883. The Commission also requires PSP to include only 50 percent of the value of pilot medical insurance expenses in its revenue requirement beginning in year two of the rate plan, and to account for the remaining 50 percent as pilot compensation that must be paid from pilot DNI.

28 The Commission authorizes the following adjustments, which apply to both years of the two-year rate plan:

- PSP's restating adjustment for medical insurance expenses for PSP employees;
- Staff's adjustment to PSP's transportation expenses;
- PSP's restating and pro forma adjustments for legal expenses, subject to Staff's proposed amortization periods;
- Staff's adjustments to PSP's consulting fee expenses;
- Staff's adjustment to PSP's depreciation expense;
- Staff's adjustment to entertainment and travel expenses; and
- PSP's 20 uncontested restating and pro forma adjustments.

29 The Commission rejects PSP's proposal to recover through rates $150,000 in self-insurance premium expenses. Finally, the Commission approves PSP's proposed rate design, subject to traditional rounding rules and Staff's forecast for vessel traffic.

II. DISCUSSION AND DECISION

A. COMMISSION REGULATORY AUTHORITY

1. History of Commission Regulation

30 Since its creation, the Commission has sought "to balance equitably the interests of ratepayers, shareholders and the broader public."[24] In 1905, the Legislature established the Washington Railroad Commission to regulate railroad companies.[25] The three-person Commission had the authority to set fair rates for railroad traffic based on U.S. Supreme Court precedent,[26] and to require the companies to provide better schedules, safer services, and annual reporting.[27]

31 Over time, the Commission's responsibilities have changed and grown. In 1911, the Legislature granted the Commission jurisdiction over all investor-owned public service properties and utilities operating in the state.[28] The Legislature soon expanded this authority to include telephone, telegraph, water companies, vessels, warehouses, and motor carriers.[29] In 1961, the Legislature gave the Commission its current name, the Washington Utilities and Transportation Commission.[30]

32 The Commission's role has also evolved in response to deregulation. Following the breakup of AT&T and the initial advent of competition in the telecommunications industry,[31] the Legislature authorized the Commission to classify telecommunications services or companies as "competitive" and to allow carriers greater regulatory flexibility.[32] In other industries, state utility commissions moved away from their historic

---

[24] *In the Matter of a Joint Application of Puget Holdings LLC and Puget Sound Energy, Inc.*, Docket U-072375 Order 08 (Dec. 30, 2008).

[25] *First Annual Report of the Railroad Commission to the Governor*, 4-11 (Dec. 31, 1906).

[26] *Id.* at 10 (citing *Smith v. Ames*, 169 U.S. 466 (1898)).

[27] *Id.* at 4-7.

[28] *First Annual Report of the Public Service Commission of Washington to the Governor*, 5 (Jan. 1, 1912).

[29] *Second Annual Report of the Public Service Commission of Washington to the Governor*, 5 (Nov. 30, 1912).

[30] *See West Coast Telephone Company v. The Pacific Telephone and Telegraph Company*, Cause No. U-9208 (Nov. 22, 1961).

[31] *See United States v. AT&T*, 552 F. Supp. 131 (D.D.C. 1983).

[32] RCW 80.36.300, et seq.

role in setting rates. The Staggers Rail Act of 1980 generally preempted state economic regulation of intrastate railroad traffic,[33] and the Motor Carrier Act of 1980 removed price regulation for much of the trucking industry.[34]

33 Most recently, the Legislature granted the Commission jurisdiction over the rates for marine pilotage services.[35] These statutory amendments are discussed in greater detail below.

2. Regulation of Monopolies

34 Businesses that operate competitively in an open market set their prices based on market conditions. In certain industries, however, high barriers to entry, the desire to prevent duplicative complex infrastructure, and a lack of competition lead to natural monopolies. The state may intervene with the governance of those industries and set fair prices based on the monopolies' cost-of-service.[36]

35 The Washington Supreme Court has held that this rate-setting function is "legislative in character."[37] The Legislature has delegated this authority to the Commission in "very broad terms" using the "just and reasonable" standard.[38] In each rate case, the Commission must seek to ensure fair prices and services for customers while assuring that the regulated entity remains fiscally sound and able to continue its operations, with the opportunity to earn a return on its investments.[39] Each function is as important as the other.[40]

36 Because many regulated companies are bound to provide service to customers within a specific service territory, the Commission refers to the concept of a "regulatory compact." The Commission has explained that a "utility possesses an unending obligation to provide service to anyone within the service territory of that utility who demands

---

[33] *In the Matter of Proposed Rule WAC 480-62-218 Relating to Point Protection for Railroad Operations*, Docket TR-040151 General Order R-517 (Jan. 21, 2005).

[34] Motor Carrier Act of 1980, Pub. L. 96-296, 94 Stat. 793.

[35] *See* Chapter 81.116 RCW.

[36] The Regulatory Assistance Project, *Electricity Regulation in the US: A Guide* 5 (2011).

[37] *People's Org. for Wash. Energy Res. v. WUTC*, 104 Wn.2d 798, 808 (Dec. 12, 1985).

[38] *Id.*

[39] *Id.*

[40] *Id.*

service in accordance with approved tariffs."[41] In exchange, the Commission provides the utility the opportunity "to recover expenses it *prudently* undertakes to meet that obligation."[42] By setting rates based on the cost of providing service, the Commission sets "an authorized rate of return which represents an *opportunity*, given wise and efficient management, to earn that return."[43]

37 An appropriate rate of return should assure that the regulated company remains in business. The rate of return "need only 'enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed.'"[44] In other words, the rate of return "should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties."[45] This ensures that the regulated company continues to provide essential services to customers.

38 There is a distinction, however, between the Commission's responsibility for rate-setting and a company's responsibility for its own management decisions. The Commission generally has declined to mandate the management decisions of regulated companies, such as which pipeline should be constructed and when, under a pipeline replacement program.[46] Rate-setting principles seek to encourage prudent decisions rather than dictate them.

39 In sum, rate-setting seeks to create incentives for efficiencies that would normally occur as the result of market competition. "The fundamental economic goal of regulation is straightforward: to mimic a competitive market outcome, even when the underlying market is not competitive."[47] The Commission seeks this efficient outcome by setting a

---

[41] *WUTC v. Puget Sound Power & Light Company*, Cause No. U-83-84, Order p. 57-58 (Sept. 28, 1984).

[42] *Id.* (emphasis in original).

[43] *Id.* (emphasis in original).

[44] *People's Org. for Wash. Energy Res.*, 104 Wn.2d at 811 (quoting *Federal Power Comm'n. v. Hope Natural Gas Co*., 320 U.S. 591, 605 (1944)).

[45] *Id.* (quoting *Bluefield Water Works & Imp. Co. v. Public Serv. Comm'n*, 262 U.S. 679, 692, 67 L. Ed. 1176, 43 S. Ct. 675 (1923)).

[46] *WUTC v. Puget Sound Energy*, Docket UG-110723, Order 07 ¶ (May 18, 2012).

[47] *E.g.*, Leonardo R. Giacchino, Ph.D., Jonathan A. Lesser, Ph.D., *Principles of Utility Corporate Finance* 7 (2011).

reasonable rate of return that encourages prudent decision-making in monopoly enterprises.

3. Regulatory Relationship between the Commission and the Board of Pilotage Commissioners

40 The Board of Pilotage Commissioners (BPC) is generally charged with the administration and enforcement of the Washington Pilotage Act.[48] Among other duties, the BPC establishes a comprehensive pilot training program and issues pilot licenses.[49] The BPC must also "[d]etermine from time to time the number of pilots necessary to be licensed in each district of the state to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district."[50] Until recently, the BPC determined the rates charged for pilotage services.[51]

41 Effective July 1, 2019, the Legislature transferred the BPC's jurisdiction over rate-setting to the Commission.[52] These statutory amendments followed a broad review of pilotage regulation by the Washington State Joint Transportation Committee.[53] The Final Report and Recommendation to the Committee indicated that transferring rate-setting authority to the Commission was the "single most effective" action the Legislature could take to improve the rate-setting process and that "[a]ll parties will benefit from a process that is rules-based, enforceable, predictable, rigorous, and transparent."[54]

42 Thus, the Commission is charged with determining the rates for pilotage services.[55] The Commission "shall ensure that the tariffs provide rates that are fair, just, reasonable, and sufficient for the provision of pilotage services."[56] The Legislature did not transfer the BPC's jurisdiction over training, licensure, or other aspects of the Pilotage Act to the Commission. These issues are still properly brought before the BPC.

---

[48] RCW 88.16.035(1).

[49] *Id.*

[50] RCW 88.16.035(1)(d).

[51] Laws of 2018, ch. 107 §§ 3-8.

[52] *Id. Accord* RCW 81.116.020(1).

[53] Kermode, Exh. DPK-5 (Request for Proposals).

[54] Kermode, Exh. DPK-6 at 13.

[55] Laws of 2018, ch. 107 §§ 3-8.

[56] RCW 81.116.020(3).

B. STANDARD OF REVIEW

43 In any general rate proceeding, the Commission's ultimate goal is to set rates that are *fair* to customers and to the Company's shareholders; *just* in the sense of being based solely on the record developed in a rate proceeding; *reasonable* in light of the range of possible outcomes supported by the evidence; and *sufficient* to meet the needs of the company to cover its expenses and attract necessary capital on reasonable terms.[57] In this context, the customers are the shippers – represented by PMSA and PYM – and the company is PSP and its member pilots. Because the pilots are the equivalent of PSP's owners and shareholders, the ability to attract "necessary capital on reasonable terms" relates to PSP's ability to attract and retain pilots to perform essential pilotage service in the Puget Sound pilotage district. We apply these guiding principles in the context of pilotage rate setting in this Order.

1. The Washington Pilotage Act, RCW 88.16

44 The Washington Pilotage Act (Act) seeks to protect against loss of life, loss of property, and harm to the marine environment through a system of compulsory pilotage.[58] Vessels covered by the Act must employ a licensed pilot when navigating either the Puget Sound pilotage district or the Grays Harbor pilotage district.[59]

45 It is the BPC's responsibility to license, examine, and determine the number of pilots necessary to provide service each pilotage district.[60] The BPC may also exempt certain vessels from compulsory pilotage.[61] Under the 2018 amendments to the Washington Pilotage Act, the Commission is charged with establishing the tariffs for pilotage services.[62]

46 Pilots must meet several qualifications. Among other requirements, pilots must at least be a licensed "master" of motor vessels, and they may need to secure a federal pilot's license

---

[57] *WUTC v. Avista Corp., d/b/a Avista Utils.*, Dockets UE-160227 and UG-160228, Order 06 ¶ 79 (Dec. 15, 2016).

[58] RCW 88.16.005.

[59] RCW 88.16.070(3). *See also* RCW 88.16.050 (defining state pilotage districts).

[60] RCW 88.16.035(1).

[61] RCW 88.16.070.

[62] RCW 88.16.055.

or endorsement in addition to the state pilot's license granted by the BPC.[63] The Act requires pilots to retire at the age of 70.[64]

47 The Act also provides for mandatory rest periods for pilots.[65] For example, pilots must have a mandatory rest period of 10 hours after completing an assignment, unless the pilot was performing vessel movements in a single harbor.[66] Pilots must also have a rest period after completing three consecutive night assignments.[67]

48 While providing for this system of compulsory pilotage, the Act seeks "not to place in jeopardy Washington's position as an able competitor for waterborne commerce from other ports and nations of the world, but rather to continue to develop and encourage such commerce."[68]

49 The Act defines the Puget Sound pilotage district as "all the waters of the state of Washington inside the international boundary line between the state of Washington, the United States and the province of British Columbia, Canada and east of one hundred twenty-three degrees twenty-four minutes west longitude."[69] PSP is the association that exclusively serves the Puget Sound pilotage district.[70]

2. Marine Pilotage Tariffs and Pilotage Rules

50 The Commission "shall ensure that the tariffs provide rates that are fair, just, reasonable, and sufficient for the provision of pilotage services."[71] We must determine these rates periodically "but not more frequently than annually."[72] Any person with a substantial

---

[63] *See* RCW 88.16.090(2).

[64] *Id. Accord* RCW 88.16.102.

[65] RCW 88.16.103.

[66] RCW 88.16.103(1).

[67] RCW 88.16.103(2).

[68] RCW 88.16.005.

[69] RCW 88.16.050(1).

[70] The Puget Sound pilotage district is one of two pilotage districts in the state. The Pilotage Act also governs the Grays Harbor pilotage district. *See* RCW 88.16.050(2). The Grays Harbor pilotage district is served by two pilots who are employed directly by the Port of Grays Harbor. *See* Kermode, Exh. DPK-6 at 7.

[71] RCW 81.116.020(3).

[72] RCW 88.16.055(1).

interest may file with the Commission a proposed revised tariff. RCW 81.116.010 defines "person with a substantial interest" as a pilot or group of licensed pilots such as PSP, a vessel operator or other person that utilizes pilotage service or an organization that represents such vessel operators or persons, or any other person or business that can demonstrate that the requested tariff changes would be likely to have a substantial economic impact on its operations.[73] The burden of proof is placed upon the party filing the proposed tariff.[74]

51 When setting rates, the Commission must include certain items. The tariff for pilotage services must include a surcharge to support the BPC's training program and to support the stipend paid to pilotage trainees.[75] This training surcharge is currently $15.00, but the BPC requests the Commission increase it to $19.00 per vessel assignment.[76] The tariff must also include a $16.00 surcharge per assignment to fund the BPC's self-insurance premiums.[77]

52 The Commission may include other charges as well. The Commission may include its own reasonable costs to set pilotage rates,[78] and may consider pilot retirement expenses incurred in the prior year.[79]

53 The Commission may also fix extra compensation "for extra services to vessels in distress, for awaiting vessels, for all vessels in direct transit to or from a Canadian port where Puget Sound pilotage is required for a portion of the voyage, or for being carried to sea on vessels against the will of the pilot, and for such other services as may be determined by the board."[80]

---

[73] RCW 81.116.010(3).

[74] RCW 81.116.030(5).

[75] RCW 81.116.020(4). *See also* RCW 88.16.035(2) (providing that the BPC may pay a stipend to trainees).

[76] Burton, Exh. WTB-6 (Training Surcharge/Trainee Stipend Increase Request); WAC 363-116-300.

[77] WAC 363-116-301(2).

[78] RCW 81.116.060.

[79] RCW 81.116.020(4). *Accord* RCW 88.16.055.

[80] *Id.*

3. Commission Rate Setting Methodology

54 The Commission's traditional rate-setting process is based on cost-of-service ratemaking using historical data. Using an historical test year, a regulated company may establish, as a threshold matter, that its current rates are insufficient. The company may then provide adjustments to the test year to establish a revenue requirement model for the year when its proposed rates would take effect. This approach has sometimes been referred to as a "hybrid test year."[81] The adjustments "must be chosen with specific reference to the needs of the case, and the appropriateness of using each tool selected must be demonstrated by applicable evidence."[82] The Commission considers both "restating" and "pro forma" adjustments to the test year.[83]

55 Restating adjustments correct errors in the historical test year itself. WAC 480-07-510(3)(c)(i) explains that restating adjustments "adjust the booked operating results for any defects or infirmities in actual recorded results of operations that can distort test period earnings." This may include normalizing weather, correcting accounting errors, or adjusting book estimates to actual amounts.[84]

56 The Commission will also consider "pro forma" adjustments to the test year on a case-by-case basis. Pro forma adjustments to the historical test year must reflect "known and measurable" expenses.[85] Known and measurable expenses generally occur close to the end of the test year.[86] Where appropriate, the Commission allows pro forma adjustments for a period after the end of the test year.[87]

---

[81] *WUTC v. Avista Corporation, d/b/a Avista Utilities*, Dockets UE-160228 and UG-160229 (consolidated), Order 06 ¶ 82 (Dec. 15, 2016).

[82] *Id*.

[83] In 2019, the Legislature clarified that the Commission may also consider multi-year rate plans for regulated companies based on forecasted costs. *See* RCW 80.04.250(3): "The commission may provide changes to rates under this section for up to forty-eight months after the rate effective date using any standard, formula, method, or theory of valuation reasonably calculated to arrive at fair, just, reasonable, and sufficient rates."

[84] Dockets UE-160228 and UG-160229 (consolidated), Order 06 ¶ 82.

[85] *Id.* ¶ 35.

[86] *WUTC v. Pacific Power and Light Company*, Docket UE-140762 (consolidated), Order 08 ¶ 44 (March 25, 2015).

[87] *Id.* ¶ 44, n. 57.

57 The Commission's rules for marine pilotage services reflect these well-established practices. Pursuant to WAC 480-07-525, the interested person proposing a new tariff for marine pilotage in Puget Sound must, among other requirements, provide evidence of a test year. This is "the most recent twelve-month period for which financial data are available."[88] The interested person provides both "restating" and "pro forma" adjustments to the historical test year.[89] Notably, pro forma adjustments for marine pilotage may include projected vessel assignments and projected vessel types during the rate effective year.[90]

58 This information forms the basis for the revenue required to provide marine pilotage services, referred to as the revenue requirement, during the rate effective year. Rates are then set at a level designed to recover the revenue requirement based on sales.[91] In the case of marine pilotage services, historic and projected vessel traffic reflects the sales at issue.

C. REVENUE REQUIREMENT – CONTESTED ISSUES

1. Revenue Requirement Formula

59 In this proceeding, we determine the appropriate revenue requirement formula for PSP. After we determine the appropriate formula, we then determine the relevant inputs to arrive at PSP's revenue requirement.

60 Staff proposes a revenue requirement formula based on operating expenses and the amount of revenue distributed to pilots, as follows:

Revenue Requirement = Expenses + Depreciation + Interest + TDNI.[92]

---

[88] WAC 480-07-525(4).

[89] WAC 480-07-525(4)(d).

[90] WAC 480-07-525(4)(q).

[91] The Regulatory Assistance Project, *Electricity Regulation in the US: A Guide* 46 (2011).

[92] Kermode, Exh. DPK-1Tr 7.

61 In this formula, "TDNI" describes the total amount of PSP revenue available for distribution to member pilots as compensation, or total distributable net income. TDNI reflects each pilot's distributable net income (DNI) multiplied by the number of pilots.[93]

62 PSP agrees with Staff's formula.[94] Capt. Quick explains that Staff's methodology is the "generally accepted method of determining pilotage rates nationally."[95] However, PSP disagrees with Staff on certain inputs, such as the appropriate level for DNI and other expenses.

63 PMSA also agrees with Staff's formula.[96] PMSA suggests certain modifications to the formula,[97] which we discuss below. PMSA maintains that the testimony it offered from John Ramirez was intended to demonstrate that the current tariff was sufficient, and that the testimony was not intended to offer an alternative revenue requirement formula.[98]

Commission Determination

64 We adopt Staff's revenue requirement formula. PSP is an association of professionals. Such associations commonly distribute nearly all of their earnings to their owners or partners.[99] Although PSP requires an equity "buy in" for pilots joining the organization and an equity "buy out" for retiring pilots, PSP is not a capital-intensive organization. PSP's tariffs primarily reflect the value of pilotage services and the compensation paid to pilots for their services. Indeed, pilot DNI accounts for almost two-thirds of PSP's revenue requirement.[100] We therefore adopt Staff's revenue requirement formula because it appropriately reflects PSP's business structure as an association of professionals.

65 PMSA submits that the formula should provide a separate category for "pilot compensation expenses." This would include all compensation paid to pilots separately from TDNI, including individual pilot business expenses, transportation cost

---

[93] Although some witnesses in this proceeding use different terms, here we will use the terms TDNI and DNI.

[94] PSP Initial Brief ¶ 13.

[95] Quick, Exh. GQ-5T 2.

[96] PMSA Corrected Initial Brief ¶ 5.

[97] *Id.*

[98] PMSA Reply Brief ¶¶ 36-37.

[99] Kermode, Exh. DPK-1Tr at 8.

[100] *Id.* at 9.

reimbursements, medical benefits, and deferred compensation benefits.[101] Using the Columbia River Pilots as an example, PMSA argues that separating pilot compensation expenses from organizational operating expenses would provide for greater clarity.[102]

66 We decline to adopt PMSA's proposal because Staff's "expenses" category in its revenue requirement formula appropriately accounts for these items. As discussed below in Section II.C.6, we order PSP to recognize 50 percent of pilot medical insurance expenses as part of DNI rather than a PSP operating expense in year two of the two-year rate plan we adopt by this Order. In Section II.C.4, we order PSP and stakeholders to participate in a collaborative on PSP's pay-as-you-go retirement plan before PSP's next general rate case. We otherwise decline, however, to require PSP to create a category for "pilot compensation expenses" as PMSA proposes.

67 PMSA also argues that the revenue requirement formula should include a rate of return (ROR).[103] The ratemaking concept of a return on equity, however, does not easily apply to PSP's operations. PSP is more appropriately understood as a professional organization that distributes its income each year to member pilots. The pilots are primarily compensated through DNI rather than equity payments. Furthermore, PSP's retirement system and callbacks create significant liabilities.[104] Once these unrecorded liabilities are appropriately accounted for, PSP has a negative equity balance.[105] This renders an ROR variable in the formula irrelevant. The Commission may order a regulated company to transition to accrual method accounting without requiring the parties to include a moot term, such as ROR, in the revenue requirement formula.

68 PMSA argues further that the Commission should include Revenue Per Assignment (RPA) in the revenue requirement formula, noting that the BPC includes RPA in its annual reports.[106] We disagree. As the Oregon Board of Marine Pilotage has persuasively explained, the regulator first determines the pilot association's revenue requirement.[107] Next, similar to the Commission's own rate-setting practice, the regulator should

---

[101] PMSA Corrected Initial Brief ¶¶ 7.

[102] *Id.* ¶ 9.

[103] *Id.* ¶ 10.

[104] *See* infra at Sections II.C.4-5.

[105] Kermode, Exh. DPK-1Tr at 8.

[106] PMSA Corrected Initial Brief ¶¶ 19-21.

[107] Carlson, Exh. IC-31X at 3 (Oregon Board of Maritime Pilots Final Order No. 10-01, Issued May 19, 2010).

determine the appropriate tariff rates to recover the revenue requirement in light of projected vessel traffic.[108] PMSA would collapse this two-step process into a single equation:

TDNI = (TA * ARPA) – Expenses – Depreciation – Interest

In this formula, "TA" means Total Ship Movement and "ARPA" means Average Revenue per Assignment.[109] This alternative is less precise than Staff's formula. RPA does not answer the first question of the rate-setting process, which is PSP's revenue requirement. Nor does it answer the second step, which involves establishing tariff rates. The term "TA" presupposes a reasonable projection of vessel traffic, yet tariff rates vary widely by vessel length and tonnage, not just the number of ships. While RPA is a relevant metric for considering the sufficiency of the tariff,[110] it does not directly address PSP's revenue requirement. We therefore accept Staff's formula and reject PMSA's proposed modifications.

2. Number of Pilots to Fund

69 PSP requests that the Commission fund 61.6 full time equivalent (FTE) pilots based on an annual average total assignment level (TAL) of 118 assignments per pilot. PSP further proposes that two of the FTE pilots be designated as non-vessel moving, administrative positions to allow the president and vice president to perform administrative functions on a full-time basis.

70 PSP vice president Capt. Ivan Carlson explains in direct testimony that pilots serve on an on-call basis 24 hours per day for 15 consecutive days. During the 15th day, a different group of pilots activates for duty and the pilots previously on duty are then placed off-duty for 13 consecutive days. The on-duty periods are referred to as "on watch" and the off-duty periods are referred to as "respite."[111] Capt. Carlson explains that the Legislature in 2019 mandated a 10-hour rest period following an assignment and imposed a 13-hour maximum workday for pilots performing multiple-harbor shifts.

71 If too few pilots are available to move the number of vessels that request a pilot on any given day, Capt. Carlson testifies that properly rested, off-duty pilots are called upon to

---

[108] *Id.*

[109] *See* Kermode, Exh. DPK-8X at 2 (Staff Response to PMSA Data Request 9).

[110] *See* Moore, Exh. MM-1Tr at 25-29.

[111] Carlson, Exh. IC-1T at 5:8-15.

perform the assignments that cannot be performed by on watch pilots. These assignments, referred to as "callbacks," happen frequently due to the current pilot shortage. Capt. Carlson contends that the current pilot shortage was created by a confluence of factors, including BPC's decision to set the current number of pilots too low, the 2019 legislative changes described above, and other factors, such as trainees who are unable to complete the pilot training program or pilots who have been placed on leave because they are medically unfit for duty.[112] Capt. Carlson argues that pilot medical leave is "a fairly common occurrence" due to injuries and health issues, and that this reality should be factored in determining the appropriate number of licensed pilots to fund.[113]

72 PSP witness Dr. M. Sami Khawaja developed the forecast for PSP's proposed TAL and then assessed pilot workload to determine PSP's proposed number of pilots.[114] In direct testimony, Dr. Khawaja describes the statistical regression model and the numerous economic indicators and explanatory variables that he used to predict total annual vessel assignments.[115] Dr. Khawaja projects a total of 6,989 vessel assignments in 2020.

73 Dr. Khawaja then uses the projected vessel assignments to determine the projected workload per pilot through a marginal analysis, where the benefits of adding a pilot — such as increasing safety, decreasing callbacks, and decreasing vessel delays — were compared to the cost of additional pilots until reaching the point of diminished returns.[116] Dr. Khawaja testifies that this analysis provides for an ideal number of additional pilots per on watch schedule, and then adjusts for the two administrative pilots and average number of pilots on medical leave.[117] Through this analysis, Dr. Khawaja arrived at a proposed average TAL of 118 per pilot, and a recommendation to fund 61.6 FTE pilots.[118]

74 In response testimony, Staff witness Scott Sevall describes the equation he used to determine the number of funded pilots for the TDNI calculation, as follows:

---

[112] *Id.* at 7:19-8:2.

[113] *Id.* at 8:5-9.

[114] Khawaja, Exh. SK-1T at 3:11-12.

[115] *Id.* at 4:16-24, 5:1-10.

[116] *Id.* at 5:20-24, 7:17-18.

[117] *Id.* at 8:11-22, 9:5-11.

[118] *Id.* at 9:16-17.

TDNI = DNI * Pilots

Pilots = (AP ÷ TAL) +1

Where:

Pilots = Number of Funded Pilots

AP = Projected number of pilotage assignments in the rate year

TAL = Target Assignment Level per Pilot[119]

75 Sevall calculates an AP of 7,310 based on the total assignments reported for the test year, adjusted for the percentage change in vessel traffic from 2018-2019 as reported by the Vessel Entry and Transit Report (VEAT) published by the Washington Department of Ecology.[120] Staff recommends the Commission use a TAL of 143.4, which Sevall produced by calculating a five-year average for pilotage assignments based on annual numbers provided by the BPC for 2014-2018.[121] Finally, Sevall adds one pilot position to account for the PSP president, whose full-time administrative duties limit their ability to accept pilotage assignments.[122] Using these inputs, Staff recommends the Commission fund an implied number of 51.98 FTE pilots.[123] Staff uses the same BPC dataset for its proposed DNI by calculating an adjusted five-year average.[124]

76 Table 1, below, compares the current number of working licensed pilots, the number of pilot licenses approved by the BPC, and the number of pilot licenses proposed by both Staff and PSP.

Table 1: Overall Comparison of Positions and Licensed Pilots.

	Staff	**PSP**
Funded Pilots	51.98	61.6

[119] Sevall, Exh. SS-1T at 7:13-20

[120] *Id.* at 9:1-9; Sevall, Exh. SS-2, Sch 2.1 at line 8.

[121] Sevall, Exh. SS-2, Sch. 2.1 at line 8; Sevall, Exh. SS-1T at 9:15-19.

[122] Sevall, Exh. SS-6T at 4:5-12; vonBrandenfels, Exh. EVB-1T at 14:24-19:6.

[123] Sevall, Exh. SS-1T at 13:1-3.

[124] Sevall, Exh. SS-2, Sch. 2.3.

Total Assignment Level	143.4	118
DNI	$400,855	$500,000
TDNI	$20,836,422	$30,800,000
Current Number of Working Licensed Pilots	49[125]	
Updated BPC Approved Number of Licensed Pilots	56[126]	

77 In its initial brief, PSP argues that funding the actual number of current pilots would present several problems due the fluctuating number of pilots, changes in shipping traffic, and variance in vessel size. As such, PSP proposes the Commission fund the optimal, or implied, number of pilots, then create a staffing model "to determine the number of full time equivalent pilots needed in the rate year when utilizing the watch schedule and rotation system under optimal staffing conditions that minimize or eliminate Callbacks."[127] Specifically, PSP contends that TALs should be based on "the average number of assignments a pilot would perform on watch if PSP were staffed in a manner that permitted pilots to work only while on watch."[128]

78 PSP also criticizes Staff's method for calculating its recommended TAL based on an historical average of assignments performed over a five-year period without evaluating the result. PSP argues that Staff's proposal will create significant regulatory lag between the time workload changes and the time those changes are reflected in rates.

79 Finally, PSP argues that the Commission should include an additional administrative pilot in the implied pilot calculation. PSP argues that a salaried employee cannot perform the day-to-day operational and administrative functions that the vice president must attend to because "[b]oth elected executives must have real-time understanding and experience with what is going on with membership, pilot navigation safety, equipment, and

---

[125] Exh. BE-6, PSP Supplemental Response to Bench Request No. 6 (Nov. 5, 2020). As of November 5, 2020, PSP explains in response to the Commission's bench request that there are 49 licensed pilots. Of those 49 pilots, two are on major medical leave through December 2020 and January 2021, respectively. Another pilot, who is slated to retire by November 24, 2020, will be replaced by a new licensee by the end of 2020. The number of licensed pilots also includes PSP's president.

[126] Sevall, Exh. SS-1T at 11:1-2.

[127] PSP Initial Brief ¶ 59.

[128] *Id.* at ¶ 61.

environmental conditions," which are functions that only the president and vice president hold the "authority or credentials necessary to fulfill."[129]

80 In its initial brief, Staff argues that the Commission should reject PSP's proposed TAL and proposed number of pilots because these inputs should be based on safety and policy determinations that fall within the BPC's regulatory authority to determine, not the Commission's. Specifically, Staff observes that the Legislature has directed the BPC, not the Commission, to monitor and regulate pilot fatigue issues and rest periods. Finally, Staff argues that PSP failed to demonstrate that all of the tasks performed by the vice president are "so specialized that they must be done by a fully licensed pilot, rather than under the supervision of one."[130]

81 In its initial brief, PMSA argues that TDNI should be calculated using the actual number of pilots licensed, rather than available licenses or any other projected number, at the time the Commission issues its decision because that number "will always reflect the most precise number of pilots working vessels and providing pilotage services."[131] PMSA concedes that Staff's proposed use of an "implied number" of pilots is acceptable but only if it is based on Staff's methodology, which uses historical assignment levels and projected vessel traffic. PMSA further argues that using a projected number of pilots based on the number of BPC approved pilot licenses could create an overstated TDNI. Finally, PMSA agrees with Staff's proposal to limit the number of administrative pilot licenses to one non-working pilot position, PSP's president, consistent with the BPC's designation.

82 In its reply brief, PSP argues that Staff's proposal would impair the Commission's ability to make fair and objective economic rate setting decisions, and that relying on an "assignment level" to calculate funding does not override the BPC's authority because both Staff's and PSP's proposed number of pilots and proposed TAL relied on in their respective revenue requirement methodologies strictly adheres to the BPC's licensing and workload determinations.[132]

83 Staff argues in its reply brief that the Commission should find that funding more pilots than the number authorized by the BPC would undermine the BPC's authority to

---

[129] PSP Initial Brief ¶ 89.

[130] Staff Initial Brief ¶ 30.

[131] PMSA Initial Brief ¶ 13.

[132] PSP Reply Brief ¶ 32.

determine the number of pilots necessary to serve the Puget Sound pilotage district. Staff contends that the Commission "is charged with determining fair, just, reasonable, and sufficient rates for the public service that is otherwise regulated by the [BPC], and such rates should reflect the [BPC's] policy determinations."[133] Finally, Staff argues that "PSP has not shown that it cannot effectively staff for peak demand by modifying its watch rotation schedules to distribute the current group of pilots over fewer watches, thereby increasing the number of pilots available per watch."[134]

84 PMSA makes a similar argument in its reply brief, noting that "PSP contemplates no improvement in management or efficiency is even possible. Instead, it seeks the adoption of a new, unprecedented low expectation of 118 'assignments' per year. The BPC's [TAL] has been at 145 since 2010, and the historic average assignment level … has ranged from 134 to 162 from 2005 to present."[135]

Commission Determination

85 We adopt Staff's proposed average assignment level of 143.4 for the purpose of rate-setting and reject PSP's proposal for a lower average assignment level of 118. However, we adopt a two-year rate plan. As explained below, funding 50 FTE pilots in year one and 52 FTE pilots in year two institutes a realistic, gradual increase from the number of current working pilots in the first year to Staff's recommended number in year two, progressing towards the number of licensed pilots the BPC has identified. This method also incorporates traditional ratemaking principles.

86 Although we adopt Staff's proposal over a two-year period, we use the term "average assignment level" to clarify that we do not, by this Order, determine a TAL or otherwise evaluate a safe assignment level for pilots. The BPC is charged with determining the number of pilots necessary for safe, efficient pilotage service, and the Commission is charged with setting rates for these pilotage services.[136] Accordingly, we do not determine a TAL for purposes of safety or fatigue management, as these issues fall squarely within the BPC's purview. As PMSA recommends, we use the term "average

---

[133] Staff Reply Brief ¶ 7.

[134] *Id.* at ¶ 20.

[135] PMSA Reply Brief, ¶ 32.

[136] Laws of 2018, ch. 107 §§ 3-8. *Accord* RCW 81.116.020(1).

assignment level" to make clear that we reference Staff's number only for purposes of rate-setting.[137]

87 The Commission allows for adjustments to the "per books" expenses recorded during the test year. These include restating adjustments, which remove costs that should not be included for recovery in prospective rates, and pro forma adjustments, which account for known and measurable changes in costs that will occur prospectively.[138] PSP's and Staff's proposals to fund a number of FTE pilots that exceeds the actual number of working pilots is, essentially, a pro forma adjustment that impacts the revenue requirement much like projected assignments or other billing determinates.[139] Under the Commission's rules, pro forma adjustments are "a mechanism that gives effect for the test period to all *known and measurable changes* that are not offset by other factors."[140] By using this adjusted, historical test year, the Commission is able to match revenues to costs and determine fair, just, and reasonable rates going forward.[141]

88 We agree with Staff that PSP's proposal of funding 61.6 FTE pilots, based on a TAL of 118, infringes on the BPC's statutory authority to determine the number of pilots necessary for safe and efficient pilotage.[142] Because we do not have evidence that the BPC will authorize additional pilots, PSP's proposed adjustment does not reflect a known and measurable expense. This instead reflects a proposed, long-term plan for investment, which should not be included in rates until the investments are actually made. Staff's proposal avoids this issue by basing rates on historical, average assignment levels.

---

[137] *See* PMSA Initial Brief ¶ 15.

[138] *See WUTC v. Bremerton-Kitsap Airporter, Inc., C-903,* Docket TC-001846 Fifth Suppl. Order ¶ 16 (August 2, 2002) ("This question is resolved by determining the adjusted results of operations during the test year . . .").

[139] *See* WAC 480-07-525(4)(q).

[140] WAC 480-160-020.

[141] We are only concerned here with the principles applicable to marine pilotage. We are not concerned with the Commission's authority in regulating utilities. For example, we note that the Commission's Used and Useful Policy Statement issued in Docket U-190531 addresses the term "used and useful" as it is defined and used in RCW 80.04.250, which governs the valuation of property owned by regulated utility companies. Accordingly, it applies only to those public service companies regulated under Title 80 RCW.

[142] *See* Staff Initial Brief ¶ 9.

89 We observe that PSP's proposal essentially seeks to re-litigate issues already determined at the BPC's July 2019 meeting.[143] At that meeting, the BPC heard testimony from Erin Flynn-Evans, Ph.D., MPH, and considered the NASA fatigue study submitted by PSP.[144] The BPC also considered PMSA's response presented by Capt. Moore.[145] The BPC ultimately increased the number of pilot licenses from 52 to 56 in light of this testimony.[146] Thus, the BPC, in its role as the safety regulator, considered the evidence on this issue and did not adopt PSP's proposal.

90 We are also concerned that Dr. Khawaja was provided only a limited dataset to support his opinions. The primary basis for Dr. Khawaja's model was the NASA fatigue study, which mostly reflected 2018 PSP dispatch data.[147] Dr. Khawaja was able to verify the assignments by vessel type against earlier years, but was unable to verify pilot level information against earlier data.[148] Dr. Khawaja described that he verified this simulation by running it many times against different random events because he did not have historical data.[149] These appeared to be reasonable judgments given Dr. Khawaja's limited dataset. However, as PMSA correctly observes, PSP has centralized dispatch software that maintains data back to 2016.[150] It appears that Dr. Khawaja could have been provided with more comprehensive historical data.

91 PSP argues that it was appropriate for Dr. Khawaja to rely on one year of data given the change in fatigue rules in 2018.[151] We disagree. The BPC instituted new fatigue rules in October 2018.[152] The NASA fatigue study itself relied on data from as early as October 2017, before the rule change.[153] There seems little reason for limiting the pilot-level information that PSP provided to Dr. Khawaja. Indeed, Dr. Khawaja agreed that data could vary from year to year, which is why he tested his limited dataset using a

---

[143] *See* Carlson, Exh. IC-13T at 11 (July 2019 BPC meeting minutes).

[144] Carlson, Exh. IC-13T at 3-6 (July 2019 BPC meeting minutes).

[145] *Id.* at 6-7.

[146] *Id.* at 11.

[147] Khawaja, TR 176:1-18, 178:16-20.

[148] *Id.* at 177:10-21.

[149] *Id.* at 182:12-183:3.

[150] PMSA Initial Brief ¶ 69 (citing Carlson, TR 367:5-8).

[151] PSP Reply Brief ¶ 39.

[152] Carlson, Exh. IC-1T at 14:23-25.

[153] Carlson, Exh. IC-15 at 16-17 (analyzing the "trailing 12 month" dataset).

simulation model.[154] The limited dataset provided to Dr. Khawaja undermines rather than supports PSP's proposal to fund 61.6 FTE pilots.

92 Thus, we reject PSP's request to fund 61.6 FTE pilots in rates. By including fictional pilots above what the BPC has authorized, PSP seeks to recover expenses that are not used and useful to the vessel ratepayers. The Commission traditionally does not set rates based on long-term budget forecasts and may approve pro forma adjustments for a period after the end of the test year.[155] PSP's proposal departs from these principles. Additionally, PSP's arguments for a lower TAL ultimately represents a policy disagreement that is properly brought before the BPC for resolution.

93 Here, we find that Staff's proposed average assignment level of 143.4 results in a fair and reasonable outcome by relying on a known and measurable calculation on which to base pilot numbers for rate setting purposes. Staff witness Sevall indicated that the average assignment level "represents the average amount of pilotage service, in assignments, that an average pilot is expected to perform in the rate year."[156] Specifically, this is an average of a five-year period.[157] Sevall continues, "[f]or example, in 2018 the BPC reported 7,324 total assignments and 50.3 pilots for an average of 145 assignments for the year."[158] Sevall then divided the projected number of assignments by the average assignment level of 143.4 to arrive at the recommended number of 51.98 FTE pilots for the rate-effective year.[159] Rather than addressing safety and fatigue management issues, which are properly reserved for the BPC, Staff's proposal merely determines the average assignment level for PSP pilots based on a five-year average. Calculating the revenue requirement based on this figure ensures that the number of funded pilots represents a fair valuation for the pilotage services provided to vessels.

94 Staff's proposal provides compensation for PSP pilots when the number of actual, working pilots drops below the number of funded pilots. As of November 5, 2020, PSP

---

[154] Khawaja, TR 184:6-11.

[155] *WUTC v. Pacific Power and Light Company*, Docket UE-140762 (consolidated), Order 08 ¶ 44, n. 57.

[156] Sevall, Exh. SS-1T at 7:5-9.

[157] *See also* Sevall, Exh. SS-2, Sch. 2.2 (underlying table).

[158] *See* Sevall, Exh. SS-1T at 7:5-9.

[159] *Id.* at 7:11-20.

had 49 licensed pilots,[160] and Capt. Carlson only expects 52 licensed pilots by the end of 2021 due to the time necessary to train and license new pilots.[161] Staff asserts these licensed, working pilots must take on additional assignments in order to support a system of compulsory pilotage that Staff estimates requires 51.98 FTE pilots. By funding additional pilots above the number of currently working pilots, Staff proposes to place a "premium" into rates that will then be distributed among the pilots, reflecting the value of their additional work.[162]

95 We reject PSP's proposal to include the vice president position as an administrative pilot. This request departs from longstanding practice and would impose unreasonable additional costs on ratepayers. Vice president Capt. Carlson himself admits that "it wasn't until sometime in 2018" that this became a full-time administrative position for him.[163] Much of this time was apparently spent preparing for PSP's first general rate case before the Commission. Capt. Carlson described spending a "substantial amount" of his time on tariff design and operational issues.[164] We agree with Staff that these substantial time commitments are not present in a typical rate year, and that they should not be included in rates.[165]

96 Furthermore, we agree with Staff and PMSA that some of the vice president's duties could be delegated to an analyst or another employee who does not require the salary of a licensed pilot.[166] For example, Capt. Carlson described working on the Scheduling Committee to help allocate assignments, saying that it "carries more weight with the pilots" when he oversees assignments.[167] But he admitted this task could be delegated to non-pilot office staff.[168] Even though the vice president may reasonably take on fewer

---

[160] *See* Exh. BE-6, indicating a total of 48 licensed pilots including three on major medical. *See also* Carlson, Exh. IC-1T at 16:17-20 (noting 47 working pilots including the PSP President); Sevall, Exh. SS-1T at 11:1-2 (noting 47 licensed pilots during the test year).

[161] Carlson, Exh. IC-1T at 16:21-17:4.

[162] *See Id.*

[163] Carlson, TR 11:15-22.

[164] Carlson, Exh. IC-1T at 1:20-23. *See also* Carlson, TR 395:22-396:6 (describing regular meetings for the general rate case and preparing for them).

[165] *See* Staff Initial Brief ¶ 30.

[166] *See Id.*; PMSA Initial Brief ¶ 85.

[167] Carlson, TR 393:1-17. *See also* Carlson TR 405:13-17 (providing additional inputs to the dispatchers who then input it into the dispatch system).

[168] *Id.*

vessel assignments than the most productive pilots, it is still fair and reasonable for ratepayers to expect the vice president to accept regular on watch assignments. We share PYM's concern that the vice president's focus on administrative tasks has tended to increase the organization's callback liability.[169]

97 Thus, we agree with Staff and PMSA that one of the funded pilots, the PSP president, should be included in rates as an administrative pilot.[170] The president is the chief executive of the organization, acts as the primary spokesperson, and represents the pilots on safety, security, and legislative issues.[171] The BPC has accordingly recognized "one non-watch standing president" in its past decisions.[172] We find it reasonable to continue to include the president's position as an administrative pilot.

98 PSP argues that Staff's proposal unfairly suppresses pilot earnings by relying on past decisions of the BPC.[173] We disagree with this assertion. The BPC's past decisions are relevant to the valuation of pilot compensation in the Puget Sound pilotage district. The BPC is charged with determining the number of pilots necessary to "optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district."[174] When deciding on the appropriate number of authorized pilots, it is the BPC's prerogative to balance several considerations, including safety, workload, and anticipated retirements.[175] The BPC also considers "[t]he importance of the maritime industry to the state balanced by the potential hazards presented by the navigation of vessels requiring pilots."[176] Staff's average assignment level reasonably reflects the impacts of the BPC's decisions related to the number of authorized pilots and the need for additional licensed pilots over a five-year period of time.

99 PSP also argues that Staff's proposal would result in under-earnings when pilots retire due to the delay in licensing a replacement pilot.[177] However, this concern is mitigated by

---

[169] PYM Initial Brief at 1.

[170] *See* Staff Initial Brief ¶ 30; PMSA Initial Brief ¶ 18.

[171] vonBrandenfels, Exh. EVB-1T at 14:24-17:2.

[172] *E.g.*, Kermode, Exh. DPK-14X at 2.

[173] PSP Initial Brief ¶ 57.

[174] RCW 88.16.035(1)(d).

[175] WAC 363-116-065(2).

[176] *Id.*

[177] *See* PSP Initial Brief ¶ 56.

Staff's use of a five-year average. It is reasonable to expect that the BPC training program would fill the slots left by a retiring pilot over a five-year time frame. Even if PSP sees multiple retirements in one year, these effects are moderated over time by the continued use of a five-year moving average.

100 Finally, PSP argues that Staff's proposal would result in under-earnings if the number of vessel assignments increases during the rate year.[178] This is not persuasive. As Sevall explains, Staff arrived at 51.98 FTE funded pilots by dividing projected assignments by the average assignment level.[179] Staff's proposal clearly allows for an upward adjustment in the number of funded pilots when vessel traffic is projected to increase during the rate-effective year.

101 Staff's proposal to fund 51.98 FTE pilots therefore represents a reasonable adjustment for the TDNI calculation in determining an appropriate revenue requirement. Staff's method appropriately respects the BPC's safety determinations and appropriately calculates the average assignment level for 51.98 FTE pilots. This number captures the value of pilotage services received by the vessels. It is also reasonable to include the PSP president as an administrative pilot who does not accept regular on-watch assignments.

102 We exercise our discretion, however, to modify Staff's proposal to provide for a two-year rate-plan. The rate-setting practice the Commission has historically employed requires a qualitative evaluation of regulatory principles and not merely the application of mathematical calculations. In light of these policy considerations, we find it is appropriate to authorize funding for 50 FTE pilots in year one and 52 FTE pilots, as Staff proposes, in year two. This approach provides a gradual increase in pilotage rates for ratepayers as well as a modest increase for PSP's management to help maintain financial stability during the unprecedented economic conditions created by the COVID-19 pandemic. Rather than adding more than $1.8 million to PSP's revenue requirement during the rate effective year, as Staff proposes,[180] we provide two years to incrementally implement these changes, which both reduces rate shock to ratepayers and more accurately reflects the actual number of working pilots during the first year of the two-year rate plan.

---

[178] *Id.*

[179] Sevall, Exh. SS-1T at 7:11-20.

[180] *See* LaRue, Exh. AMCL-2r2 at 1:6.

103 This two-year rate plan also provides PSP with an opportunity to increase its organizational efficiency, an important characteristic of well-run regulated utilities. As discussed below, we are concerned that PSP (1) does not efficiently distribute its workload, (2) presents its workload data in an inconsistent manner, and (3) pays its pilots equally despite significant disparities in individual pilot workloads. Accordingly, we are concerned that adopting Staff's proposal to fund 51.98 FTE pilots in the first year of the rate plan would have the unintended consequence of rewarding PSP's less-than-efficient operations. Our decision to implement a two-year rate plan thus reflects our expectation that PSP will create efficiencies to better use its current pilot staffing level. Based on the evidence in the record, we anticipate that the number of licensed pilots should increase in the second rate year. As Capt. Carlson indicated, PSP intends to have 52 licensed pilots by the end of 2021.[181] Accordingly, we are satisfied that funding 52 FTE pilots in the second year of the rate plan based on PSP's projected number of pilots will not inadvertently reward inefficient management.[182]

104 We recognize that Staff's calculation for 51.98 FTE pilots is premised on vessel traffic projected in 2020 rather than the second year of the two-year rate plan this Order implements. Nonetheless, we find that regulatory considerations and principles justify incrementally increasing the number of FTE pilots from the current number of 49 to 50 in the first year of the rate plan, and to 52 in the second year of the rate plan, to arrive at the most just and reasonable "end result."[183]

105 Additionally, we find that adjusting the number of funded pilots downward in year two due to the decline in vessel traffic related to the COVID-19 pandemic would be neither reasonable nor appropriate. As we discuss in Section II.D., no party advocates for adjusting pilotage rates to account for the impacts of the pandemic. Training and licensing new pilots takes time, and ratemaking should both recognize and support the BPC's efforts to license additional pilots in the near-term.

---

[181] Carlson, Exh. IC-1T at 16:21-17:4.

[182] We recognize that funding 52 FTE pilots in year two represents a statistically insignificant variation from Staff's recommendation to fund 51.98 FTE pilots. There is little purpose or effect, however, in reducing PSP's revenue requirement by two-hundredths of one FTE pilot. Basing rates on 52 FTE pilots, which is the number of licensed pilots PSP projects will be licensed in the second year of the two-year rate plan, is thus more appropriate and reasonable. *See* Carlson, Exh. IC-1T at 16:21-17:4.

[183] *See Federal Power Comm. v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944).

106 Because we are not charged with regulating the safety of marine pilotage or determining the number of authorized pilots, we must decline to resolve the parties' disputes regarding the efficiency of PSP's dispatch system, the appropriate TAL for pilots, and other workload issues. Again, the purpose of economic regulation is to promote efficiency rather than to direct internal management decisions. By setting the revenue requirement, the Commission is providing PSP "an *opportunity*, given wise and efficient management, to earn that return."[184] In this case, we share PMSA's concerns that it is difficult to evaluate the efficiency of PSP's management of its workload and that PSP may be missing opportunities to provide incentives for pilots to accept assignments. Yet we consider these issues through our lens as an economic regulator. It is ultimately PSP's responsibility to make prudent management decisions to earn the revenue requirement authorized by the rates the Commission sets.

107 To begin, it is difficult to clearly evaluate pilot workload. As PMSA explains, PSP has relied on a dataset showing pilots' "Job Hours" to present its rate case.[185] PMSA witness Capt. Moore relied on this data to conclude that only one pilot assignment during the test period exceeded 14 hours.[186] Yet in reviewing those same exhibits, it appears that six assignments required more than 14 "Job Hours." These were the *Star Grip* (23 Job Hours), the *Eurodam* (17 Job Hours), the *ATB Ocean Reliance* (19 Job Hours), the *Azamara Quest* (15 Job Hours), the *Oosterdam* (15 Job Hours), and the *Eurodam* again (15 Job Hours).[187] Capt. Moore may have missed these additional assignments. PSP criticizes Capt. Moore's testimony relying on this data as "wildly" inaccurate,[188] and relies on a second dataset, provided by Staff and designated as cross examination exhibit Exh. IC-40X, to argue that there "were in fact *446* assignments in 2018 and *308* assignments in 2019 which exceeded 14 hours."[189] In response, PMSA argues that by using this second dataset produced only one week before the hearing, PSP appears to rely on the pilots' "Check In Time" to establish that assignments last longer than indicated by

---

[184] *WUTC v. Puget Sound Power & Light Company*, Cause No. U-83-84, Order p. 57-58 (September 28, 1984) (emphasis in original).

[185] PMSA Reply Brief ¶¶ 40-42 (citing Burton, Exh. WTB-11, Exh. WTB-12, and Exh. WTB-13).

[186] Moore, TR 534:18-535:18.

[187] Burton, Exh. WTB-11; Exh. WTB-12. *See also* Burton, WTB-13 (setting forth the same Job Hours data without rounding).

[188] *See* PSP Initial Brief ¶ 102.

[189] *Id.* (emphasis added).

Capt. Moore.[190] PMSA attempted to clarify the different datasets with Capt. Carlson at the hearing, but Capt. Carlson maintained that he could not speak to what the data contained in Exh. IC-40X represents.[191] We thus face the same difficulties as PMSA in evaluating the data regarding pilot workload. PSP appears to take varying positions on when pilot assignments end. Although the Commission obtained PSP's dispatch records through a bench request, it remains unclear whether we should consider the data using "Job Time" or "Check In Time."[192] Given the inconsistent and unclear presentation of this data, we are not assured that PSP's dispatch system is using existing pilots in the most efficient manner.

108 We also observe that PSP does not use its compensation system to encourage pilots to maximize their availability while on watch, or to take callback assignments. PSP pilots receive a share of the organization's revenue based on their "duty days," which, for most pilots, is 365 days a year.[193] Indeed, PSP's decision to distribute revenue based on duty days allows some pilots to perform far fewer vessel movements and earn the same income as pilots who perform more than twice as many assignments. In 2018, the most productive pilots completed 222, 191, and 183 assignments each.[194] PSP does not contend and there is no evidence in the record that these pilots violated any rest rules.[195] By comparison, the least productive pilots completed 89, 112, 113, and 118 assignments each.[196] Although the least productive pilots include the vice president and a BPC Commissioner who have other significant administrative responsibilities, this does not fully explain the variation in vessel movements among pilots.

109 PSP vice president Capt. Carlson argues that the current system is more fair than compensating pilots based on the actual amount of revenue they generate because "[s]ome ships pay more, some ships pay less."[197] While it may be reasonable to remove this element of chance from pilot compensation, PSP has missed any opportunity to

---

[190] PMSA Reply Brief ¶ 41 (discussing Carlson, Exh. IC-40X).

[191] Carlson, TR 364:20-21.

[192] *See* BE-1 (PSP response to Bench Request 1).

[193] Moore, Exh. MM-67X at 15 (November 2018 PSP Bylaws); Norris, Exh. JN-4; Carlson, TR 327:25-330:1.

[194] Moore, Exh. MM-22.

[195] Moore, Exh. MM-1Tr at 45:5-9. *See also* Moore TR 509:7-25.

[196] Moore, Exh. MM-23.

[197] Carlson, TR 374:17-375:18.

motivate pilots through compensation by structuring its organization so that pilots earn the same income regardless of how much or how little they work. In light of these concerns, we recommend that PSP retain an outside consultant to study its organizational efficiency. Although it is not our role to direct internal management decisions, we offer this suggestion for PSP's consideration. An outside consultant may identify areas where PSP could maximize its ability to earn the revenue requirement authorized by the Commission.

3. Pilot Compensation – Distributed Net Income

110 PSP requests the Commission authorize an annual DNI of $500,000 per FTE pilot, which produces a TDNI of $30.8 million based on its proposal to fund 61.6 FTE pilots.[198] Staff proposes a DNI of $400,855 per FTE pilot, which produces a TDNI of $20.8 million based on Staff's proposal to fund 51.98 FTE pilots.[199] Neither PMSA nor PYM propose a DNI, but PMSA argues that the rates in the current tariff are producing more than sufficient revenue to accommodate the provision of safe, fully regulated, efficient, and competent pilotage services in the Puget Sound pilotage district.[200]

111 PSP witness Weldon Burton recognizes that "the concept of establishing a target or distributive net income share essentially for human capital as the ultimate goal of a rate filing is vastly different … than seeking to support a rate filing which aims to establish an appropriate return for a regulated entity's capital."[201] PSP thus argues that the Commission should consider several factors to determine an appropriate level of DNI. Burton argues the Commission should first evaluate the net income earned by pilots in comparable districts, similar to what the Commission would do to evaluate a corporate executive's salary in a utility rate case.

112 PSP witness Capt. Quick provides testimony related to the national average annual pilot income. PSP witness Capt. Carlson provides an analysis of pilot income for nine pilot associations to support PSP's recommended DNI. PSP witness Capt. Eric vonBrandenfels testifies about the comparability of eight of these pilotage districts to Puget Sound. Capt. Quick testifies about the importance of compensation in pilot recruitment and retention.

---

[198] Carlson, Exh. IC-1T at 18:19.

[199] Sevall, Exh. SS-5T at 1:17-19.

[200] Moore, Exh. MM-1Tr at 7:6-13.

[201] Burton, Exh. WTB-1T at 5:14-17.

113 PMSA witness Capt. Moore argues that the current tariff structure and rates result in record high revenues per unit of service provided, and that the current tariffed rates are more than sufficient to cover essential pilot expenses and supply a robust income to individual pilots without any need for rate increases.[202] He provides data showing that the average revenue per vessel move in 2019 was $4,899 compared to $2,531 in 2005, an increase of 93.6 percent, and that the average revenue per vessel move increased by 13.6 percent under the current tariff, which has remained unchanged since 2015.[203] Total pilotage revenue has increased from $20.7 million in 2005 to $33.7 in 2019, an increase of 63 percent.[204] Capt. Moore contends that the internal PSP decisions about how, when, and in what amount to share compensation among the members are immaterial to the cost of service.[205]

114 PMSA witness John. C. Ramirez argues that DNI represents the cost of service plus the return on investment, expressed as a fair return for PSP members on their ownership investment in PSP.[206] Ramirez provides a traditional rate of return analysis to compare the revenues generated by PSP to revenue generated by other regulated transportation industries. Ramirez also analyzes whether the current tariff rates are sufficient to recover PSP's operating costs and provide a fair and reasonable rate of return to the pilots for their investment in PSP.[207] Based on his analysis, Ramirez argues that a fair and reasonable rate of return on investment in the transportation industry ranges from 13 to 35 percent. Ramirez concludes that PSP's return on investment ranged from 61 to 62 percent, which, he argues, far exceeds a fair and reasonable rate of return.[208]

115 Staff witness Scott Sevall applies a five-year historical average approach with known and measurable adjustments to calculate DNI. Sevall's first adjustment removes the value of current period callback assignments, and the second adjustment accounts for inflation to bring the DNI value into the current year.

---

[202] Moore, Exh. MM-1Tr at 7:16-20; Moore, Exh. MM-4.

[203] Moore, Exh. MM-1Tr at 11:22-25, 12:13-16; Moore, Exh. MM-03.

[204] Moore, Exh. MM-1Tr at 13:6-10; Moore, Exh. MM-04.

[205] Moore, Exh. MM-1Tr at 7:20-25.

[206] Ramirez, Exh. JCR-1Tr2 at 9:15-22.

[207] *Id.* at 7:16-22; 8:4-11.

[208] *Id.* at 14:6-10.

a. Comparable Pilotage Districts, National Average Pilot Compensation, and Historical Compensation

116 PSP witness Capt. Quick testifies that the estimated national average annual pilot compensation for deep draft ports is between $550,000 and $600,000.[209] Capt. Quick argues that external factors, such as unanticipated expenses for repairs, maintenance, and replacing boats or equipment, as well as changing size profiles of the ships calling on the Puget Sound, may affect the precision of rate setting for pilot income. Additionally, Capt. Quick acknowledges that vessel assignments may be overestimated during economic downturns, such as the current circumstances created by the COVID-19 pandemic, but that PSP's filing does not account for those circumstances.[210]

117 PSP witness Capt. vonBrandenfels provides testimony and exhibits addressing the comparability of the operational and geographic characteristics of numerous pilotage districts that have publicly available pilot compensation data, including: San Francisco Bar Pilots (SFBP), Columbia River Bar Pilots, Columbia River Pilots (COLRIP), Associated Branch for the Port of New Orleans Pilots (Associated Branch Pilots), Crescent River Port Pilots Association (Crescent River), New Orleans Baton Rouge Pilots (NOBRA), Lake Charles Pilots, and the Port Everglades Pilot Association (Port Everglades). [211] Capt. vonBrandenfels says that he can testify accurately about the navigational realities in each of these districts and how they compare to Puget Sound because he has taken observational trips on vessels in each district.[212] He then describes characteristics for each district, such as the type of vessels, length and duration of pilotage assignments, level of traffic congestion, currents, weather, types of ship movements required, and how those characteristics compare to pilotage conditions in Puget Sound.[213]

118 PSP witness Capt. Carlson provides a limited comparative analysis of pilot compensation for the pilotage districts described by Capt. vonBrandenfels. Capt. Carlson adjusts the net incomes to account for the different methods by which benefits are provided or paid for

---

[209] Quick, Exh. GQ-1T at 16:1-7.

[210] *Id.* at 16:19-18:1.

[211] vonBrandenfels, Exh, EVB-1T at 19:19-25, 20:1.

[212] *Id.* at 20:11-21.

[213] *Id.* at 21:7-14; 24:14-16; 26:4-5; 27:10-14; 29:20-25; 30:18-21; 31:14-16; 32:2-3, 14-16; 33:7-11.

by different pilot groups, either adding or subtracting the cost of benefits as necessary.[214] Capt. Carlson concludes that the average pilot income for all publicly available pilotage districts is $541,204; however, to avoid the large tariff increase required by a DNI of $541,204, PSP instead requests a DNI of $500,000 per FTE pilot.[215]

119 Staff witness Sevall disputes Capt. vonBrandenfels's testimony on the comparability of the pilotage districts PSP used to calculate average pilot compensation, arguing that information from additional pilotage districts not included in PSP's testimony must be considered to obtain a fair evaluation of comparable data.[216] Sevall also contends that a financial audit of each comparable district is necessary if PSP seeks to rely on it for rate setting purposes.[217]

120 In rebuttal testimony, Capt. Carlson maintains that the pilotage districts PSP uses for comparison purposes are truly comparable. He argues that pilots in the comparable districts face similar work-related risks and hazards, similar financial risk during economic downturns, and undergo similarly rigorous training and testing processes to become licensed. Capt. Carlson also recognizes, however, that differences between the various pilotage districts exist, such as the number of pilots that are required to complete the district's assignments and individual pilot workloads.[218] Further, Capt. Carlson testifies that PSP has submitted both audited and reviewed financial statements for each of the comparable districts. Capt. Carlson argues that that the audited financials stand on their own merit and an independent Staff audit of those districts is unnecessary.[219]

121 Capt. Quick also refutes Sevall's testimony regarding the need for audited financials to properly consider comparable pay from other districts, arguing that the Commission uses comparability factors when reviewing executive compensation in the energy and other public utility rate setting proceedings.[220] Capt. Quick asserts that comparability analyses do not require identical conditions, and that such analyses are a common standard used to equitably determine fair, just, and reasonable compensation. Capt. Quick contends that pilots in the major gulf and west coast ports share similar responsibilities, that they pilot

---

[214] Carlson, Exh. IC-1T at 18:1-4.

[215] *Id.* at 18:13-19.

[216] Sevall, Exh. SS-1T at 14:15-20; 15:1-3.

[217] *Id.* at 15:7-11.

[218] Carlson, Exh. IC-4T at 52:1-18.

[219] *Id.* at 53:3-7.

[220] Quick, Exh. GQ-5T at 7:3-7.

similar and often identical vessels, and that the general maritime law application of pilot duties, relationship with the vessel, and relationship with the vessel owner are the same in all ports.[221]

122 Capt. Quick further argues that many other states and pilotage rate-setting boards use comparative pilotage pay as a standard for rate setting. As an example, Capt. Quick points to the Oregon rate-setting board, which is directed, at a minimum, to consider the compensation and benefits of pilot groups in the Puget Sound and San Francisco.[222] Capt. Quick testifies that Hawaii, Virginia, and Louisiana all consider compensation comparability in their respective pilotage rate setting laws and rules.[223]

123 Also responding to Staff, PSP witness Capt. Jeremy Nielsen argues that COLRIP is comparable to Puget Sound for compensation purposes because both districts require pilots to have similar experience and skillsets. Capt. Nielsen further asserts that there is considerable similarity between the types of vessels handled, the watch schedule and fatigue rules, and association structures that require the pilots to assume greater financial risk than pilots who work as public employees for their respective districts.[224]

124 In cross answering testimony, Staff witness Danny Kermode disagrees with Ramirez's recommendations related to pilot compensation, arguing that the analysis appears to compare PSP as a professional association of independent contractors to wage laborers under an employer-employee relationship. Staff recommends the Commission disregard Ramirez's analysis because "regulation must recognize the reality of the business form used by pilots to conduct business and not attempt to impose an imaginary business structure for the convenience of moving pilot earnings from net income to a labor expense."[225]

125 In its initial brief, PSP argues that Staff's proposed methodology treats pilot labor as an expense to be normalized and projected based on the income earned in an historical test period, which "presuppos[es] the sufficiency of the normalized test year income without any external or objective benchmark."[226] PSP urges the Commission to apply standards

---

[221] *Id.* at 7:11-20.

[222] *Id.* at 8:9-15.

[223] *Id.* at 8:24-25, 9:1-18.

[224] Nielsen, Exh. JJN-1T at 2:12-16, 23-24.

[225] Kermode, Exh. DPK-3T at 18:7-16.

[226] PSP Initial Brief ¶ 34.

consistent with those it uses to establish the appropriate level of owner or executive compensation for other regulated public service companies, and to consider comparable pilot income like the Oregon and Maryland public service commissions do.

126 In its initial brief, PMSA maintains its position that PSP has not met its burden of proving that current tariff rates are not fair, just, reasonable, and sufficient. PMSA contends that reliable and directly comparable compensation is not available, and that "nothing indicates that other jurisdictions determine pilot compensation levels with the level of evidentiary rigor and analysis that the Legislature sought when it moved Washington's pilotage rate setting process to this Commission."[227]

127 Staff argues in its initial brief that PSP failed to provide complete information regarding the individual components of pilot compensation in other jurisdictions. Without that information, Staff contends that PSP has failed to sufficiently demonstrate "that the purportedly comparable pilotage district incomes are reasonably comparable, because PSP cannot show that the allegedly comparable incomes contain the same components."[228] Staff also criticizes PSP's "contradictory opinions" on what factors are relevant for the purpose of identifying comparable districts, and then again in comparing those districts.[229] Finally, Staff argues that PSP has not explained why its proposed DNI is appropriate based on incomes in districts that PSP identifies as comparable. As such, Staff asserts that PSP's recommended DNI is arbitrary and capricious.

128 PSP addresses Staff's arguments in its reply brief, asserting that Staff's methodology leaves in place the results of the BPC's previous "black box" rate setting method and fails to consider pilot income in other jurisdictions or other relevant market factors. PSP urges the Commission to rely on two ratemaking principles: the "zone of reasonableness," which the Commission often relies on when calculating a reasonable rate of return; and gradualism, which would temper the midpoint of PSP's identified "zone of reasonableness." Finally, PSP contends that neither Staff's nor PMSA's proposals "adhere to Commission precedent or follow well-established pilotage rate setting principles."[230]

---

[227] PMSA Initial Brief ¶ 54.

[228] Staff Initial Brief ¶ 34.

[229] *Id.* at ¶ 35.

[230] PSP Reply Brief ¶ 23.

129 In its reply brief, PMSA argues that PSP failed to propose "a single list of ports for use in all comparisons with the Puget Sound," but rather proposes a "continuously changing selection of ports … [that] is entirely purpose-driven."[231] PMSA further criticizes PSP's failure to offer any analysis of which ports are most comparable based on the mix of vessel types most commonly piloted, and PSP's failure to include Grays Harbor or Washington State Ferry masters, both of whom operate in Washington. Finally, PMSA argues that PSP fails to provide analysis of several relevant comparability factors, such as safety practices or the duration and intensity of pilot training programs.

b. Attracting and Retaining Candidates

130 Capt. Quick argues in direct testimony that the pool of potential pilot trainees is highly competitive and that candidates are often placed on several pilotage district waitlists at the same time. Because qualified candidates sometimes have multiple options, Capt. Quick contends that compensation is the most significant factor in pilot recruitment.[232] Although Capt. Quick acknowledges location, climate, cost of living, and personal preferences are also factors, he argues that candidates will often compete for openings in pilotage districts that offer the highest income and best working conditions.[233] Capt. Quick further asserts that the substantially reduced income received during the lengthy training and rigorous testing period required to receive a state pilot license must also be considered when evaluating overall pilot compensation.[234] Capt. Quick argues that lower pilot compensation will result in highly trained and specialized pilots migrating to higher paying districts.[235]

131 PSP witness Capt. Stephan Moreno recounts his decision to pursue a license in Puget Sound after working as a state licensed pilot for the Alaska Marine Pilots for 18 years. Capt. Moreno argues that his experience supports PSP's argument that insufficient compensation will place PSP at a competitive disadvantage to recruit qualified pilots. Capt. Moreno testifies that it was not until the BPC approved rate increases in 2006, 2007, and 2008 that he decided to actively pursue a state pilot's license in Puget Sound. According to Capt. Moreno, PSP's rate increase demonstrated the state's commitment to a safe and reliable pilotage system, brought PSP's compensation package into alignment

---

[231] PMSA Reply Brief ¶ 12.

[232] Quick, Exh. GQ-1T at 19:1-6.

[233] *Id.* at 19:1-6.

[234] *Id.* at 19:6-12.

[235] *Id.* at 20:1-4.

with the Alaska Marine Pilots, funded a retirement program, and provided adequate resources to support PSP's infrastructure.[236] Following these rate increases, "Puget Sound became attractive enough to make the major investment and sacrifices of taking the state pilotage test in Washington and entering the training program."[237]

132 Capt. Moreno argues that the current stagnation in rates and inadequate compensation resulted in two recruits entering the San Francisco training program after successfully testing in Puget Sound in 2016. Additionally, Capt. Moreno contends, two candidates from the 2018 exam cohort who also tested in San Francisco chose to train in San Francisco rather than in the Puget Sound pilotage district.

133 In responsive testimony, PMSA witness Capt. Moore argues that the BPC has never had a larger queue of potential pilot trainees than it does under PSP's current tariff.[238] To illustrate the potential workforce pool, Capt. Moore observes that the Puget Sound region has a large maritime workforce, is home to more mariners with an existing federal pilotage endorsement than most areas in the country, has a large tug fleet, contains the largest ferry system in the U.S., has a large coastal trade presence, and attracts pilots from the Alaska Marine Highway masters.[239]

134 Capt. Moore also disputes PSP's contention that the Puget Sound pilotage district is losing candidates to other districts. To the contrary, Capt. Moore argues that the exceptionally long waiting list demonstrates the attractiveness of the Puget Sound for potential pilot candidates regardless of annual compensation levels.[240] Further, Capt. Moore argues that the data show that candidates who are waitlisted in more than one district typically begin training in the district that offers the first opportunity.[241]

135 Finally, Capt. Moore disagrees with Capt. Quick's testimony that Puget Sound will lose current or potential pilots to other districts solely based on compensation levels. Instead, Capt. Moore argues, pilots changing pilotage districts mid-career is rare, citing Capt. Moreno's estimate of a national mid-career relocation rate of 0.83 percent.[242] According

---

[236] Moreno, Exh. SM-1T at 4:18-24.

[237] *Id.* at 5:2-3.

[238] Moore, Exh. MM-1Tr at 68:4-10.

[239] *Id.* at 71:21-26.

[240] *Id.* at 72:17-26.

[241] *Id.* at 73:2-11.

[242] *Id.* at 75:17-26.

to Capt. Moore, this data suggests that once a pilot is licensed in a district there are almost no factors that result in relocation. Further, Capt. Moore argues that licensed pilots in Alaska have surrendered their licenses mid-career for an opportunity to train and obtain their license in the Puget Sound, pointing to Capt. Moreno's testimony that 30 percent of identified pilots who have transferred have moved to the Puget Sound pilotage district.[243]

136 While Capt. Carlson acknowledges in rebuttal testimony that the waitlist of potential pilot trainees is larger than ever before, he argues that Capt. Moore failed to recognize that the BPC scheduled pilotage exam is offered more frequently now than it was in the past.[244] In addition, Capt. Carlson testifies that no pilots have left Alaska to attempt to become pilots in the Puget Sound since 2008.[245]

137 In its initial brief, PSP argues that insufficient pilot income can lead to attrition through early retirement and an inability to attract new pilots. PSP contends that Staff's recommended approach "inherently fails to meet legal standards for rate setting by considering whether the proposed DNI amount is sufficient to ensure PSP will objectively be able to attract and retain pilots based upon the prevailing earnings of other pilots."[246]

138 PMSA argues in its initial brief that PSP presented no evidence of any trainee or pilot leaving the Puget Sound pilotage district to train or work in another district based solely on compensation concerns. Similarly, Staff argues in its reply brief that there is no evidence in the record demonstrating that PSP is experiencing any retention or recruitment problems, noting that the most recent BPC annual report shows a pool of qualified candidates either enrolled or waiting to enroll in PSP's pilot training program.

139 In its reply brief, PSP argues that a lack of pilot attrition does not support a finding that existing pilot income is adequate. PSP urges the Commission to acknowledge those candidates that have chosen to train in the San Francisco pilotage district rather than

---

[243] *Id.* at 74:10-13, 75:2-17.

[244] Carlson, Exh. IC-4T at 39:1-3.

[245] *Id.* at 39:19-22.

[246] PSP Initial Brief ¶ 35.

focusing on "the seldom occurrence of a pilot abandoning one pilotage district for another."[247]

Commission Determination

140 We accept Staff's proposed DNI of $400,855 per FTE pilot in year one of the two-year rate plan we adopt by this Order, and increase DNI by 2.3 percent, to $410,075, in year two to account for inflation. As discussed in detail below, PSP's proposed DNI of $500,000 is based on incomplete and contradictory evidence of comparable pilotage districts and unpersuasive arguments related to pilot recruitment and retention. Staff reasonably relies on a five-year average of actual DNI per FTE pilot and appropriately adjusts it for inflation to arrive at its recommendation. We address the parties' arguments in turn.

a. Comparable Pilotage Districts

141 We begin our analysis with the controlling legal standard set out in Section II.B, *supra*: the Commission "shall ensure that the tariffs provide rates that are fair, just, reasonable, and sufficient for the provision of pilotage services."[248] Unlike rate-setting authorities in Oregon, Hawaii, and other jurisdictions,[249] the Commission is not expressly required to consider other pilotage districts as comparators for the purpose of establishing an appropriate level of DNI. We thus consider PSP's testimony and exhibits concerning comparable pilotage districts as evidence offered to support its proposed DNI and afford it weight based on its reliability and relevance to the particular facts of this case.

142 PSP president Capt. vonBrandenfels acknowledges that "very few" pilotage districts make their compensation information public.[250] Accordingly, PSP provided publicly available information from the only nine state-licensed pilot associations that make such data available. Those associations are the San Francisco Bar Pilots, Columbia River Pilots (COLRIP), Columbia River Bar Pilots, the Port Everglades Pilot Association, four

---

[247] PSP Reply Brief ¶ 13.

[248] RCW 81.116.020(3).

[249] *See* Quick, Exh. GQ-5T at 8:9-25, 9:1-18

[250] vonBrandenfels, Exh. EVB-1T at 19:16-17.

pilotage districts in Louisiana,[251] and Aransas Corpus-Christi in Texas.[252] PSP relies exclusively on this limited data for the purposes of its comparability analysis.

143 As a threshold matter, we find that the evidence PSP offered to support a finding of comparability is not sufficient to adequately or accurately demonstrate that it represents the pilotage industry as whole, which is comprised of dozens of pilot associations in 24 states and approximately 1,200 licensed pilots nationwide. [253]

144 We also agree with Staff and PMSA that PSP failed to establish clear criteria by which to evaluate the comparability of other pilotage districts.[254] Capt. vonBrandenfels testifies that the San Francisco Bar Pilots should be a primary point of comparison based on similarities in size and geography.[255] Capt. Quick, however, cites vessel traffic as the primary factor to consider in comparability analyses, then later testified on cross-examination that he would interpret a "comparable" port as "one handling ships similar to those handled by Puget Sound pilots."[256] It thus appears that PSP's own witnesses disagree on the key criteria for identifying comparable ports.

145 If vessel traffic is the primary criteria, as Capt. Quick suggests, the evidence on this issue is incomplete. PSP has not provided any specific analysis in its testimony regarding the mix of vessel traffic in the various pilot associations that were offered for comparison. Although some PSP witnesses assert that ports have similar mixes of vessel traffic, no witness provided actual data on the subject.[257] Capt. Quick even questioned the inclusion of Lake Charles in PSP's analysis, suggesting it was not comparable because of its mix of vessel traffic.[258] The lack of specific data on the primary factor identified by Capt. Quick undermines the argument that any of the pilot associations are valid points of comparison.

146 In addition, a closer examination of two neighboring pilot associations in Oregon and California fails to support PSP's recommended DNI of $500,000 per FTE pilot. With

---

[251] *Id.* at 19:18-34:4.

[252] Carlson, Exh. IC-1T at 17:12-19.

[253] Kermode, Exh. DPK-6 at 9; 23.

[254] Staff Reply Brief ¶ 36; PMSA Reply Brief ¶ 12.

[255] vonBrandenfels, Exh. EVB-1T at 21:6-14.

[256] Quick, Exh. GQ-5T at 9:5-7.

[257] *E.g.,* Nielsen, TR 275:4-12.

[258] *Compare* Quick, TR 292:5-11 ("I don't think Lake Charles is a comparable port.") *with* Carlson, Exh. IC-3 (including "last comparable net income" from Lake Charles Pilots).

regard to COLRIP, PSP did not submit actual data on the mix of vessel traffic.[259] As COLRIP president Capt. Nielsen conceded, the only similarities that COLRIP pilots and PSP pilots share are the weather conditions in the regions in which they operate and the basic skills required of all pilots.[260] We observe that COLRIP pilots received a net distribution of $398,371, after Capt. Carlson adjusts for sick leave,[261] which is slightly less than the DNI that Staff recommends. Although PSP failed to establish that COLRIP is a comparable pilot association, we note that this level of compensation fails to support PSP's proposed DNI of $500,000.

147 The San Francisco Bar Pilots, which Capt. vonBrandenfels argues should be a primary point of comparison due to the size of the district and geography of the waterways,[262] receive a DNI of $487,766 after adjusting for medical insurance expenses.[263] To the limited extent this pilot association appears comparable to the Puget Sound due to its geography, the evidence is nonetheless insufficient. PSP did not provide any data on the vessel traffic handled by the San Francisco Bar Pilots, which might establish this as a comparable district using Capt. Quick's criteria.[264] PSP also failed to provide any specific testimony on cost of living differences between San Francisco and Seattle. As Staff witness Sevall observed, the pilot associations identified by PSP may have a different cost of living in their local areas.[265] In the absence of sufficient evidence, we are unable to conclude that the San Francisco Bar Pilots' distribution of $487,766 justifies increasing PSP's DNI to $500,000. We thus place little weight on comparability as a factor in adopting Staff's recommended DNI of $400,855, but we note that compensation levels for COLRIP and the San Francisco Bar Pilots are generally consistent with our decision. [266]

---

[259] Nielsen, TR 275:4-12.

[260] *Id.* at 274:18-278:22.

[261] Carlson, IC-26 (Columbia River Pilots Net Income Calculation).

[262] vonBrandenfels, Exh. EVB-1T at 21:6-14.

[263] Carlson, Exh. IC-26 (San Francisco Bar Pilots Net Income Calculation).

[264] *See* vonBrandenfels, Exh. EVB-1T at 21:1-23:8.

[265] *See* Sevall, Exh. SS-1T at 15:7-8.

[266] To the extent we consider PSP's limited sampling of the pilotage industry, we agree with PSP's decision to remove salaried pilots from its analysis. As Carlson explains, ports such as Grays Harbor and Los Angeles rely on salaried pilots rather than pilot associations. Pilots who receive a salary, rather than DNI, do not share in the risk of a decline in shipping traffic. *See*

148 On balance, we conclude that the evidence presented to establish comparable pilotage districts is unclear and inconsistent.

149 We also share Staff's concerns about the completeness of the underlying information that PSP uses to support its comparability analysis.[267] Although we do not necessarily agree that Commission Staff must perform an independent audit of each comparable district, PSP must, at a minimum, provide financial statements for each of the pilot associations included in its comparability analysis. As it stands, the evidence in the record is not sufficient to ascertain how the associations treat pilot medical coverage and other expenses.[268] We thus conclude that PSP has failed to meet its burden to show that its proposed DNI is fair, just, reasonable, and sufficient based on the Puget Sound district's comparability to other pilotage districts.

b. Attracting and Retaining Candidates

150 We determine that the record is insufficient to support a finding that PSP's DNI should be increased to $500,000 to attract qualified candidates or to prevent attrition through early retirement. With an average disbursement per pilot of $402,219 in 2018 and $369,647 in 2019,[269] there is no shortage of candidates, and many pilots work until the mandatory retirement age. Accordingly, we place little weight on this factor.

151 It is instructive to compare the facts of this case to those in *American Great Lakes Ports Ass'n v. Schultz*.[270] In *Schulz*, there was "ample evidence" that low compensation caused a shortage of pilots on the Great Lakes.[271] Pilots and trainee pilots resigned because of the low compensation and long hours.[272] Another witness described 10 pilots retiring early for the same reasons.[273] This case differs in several important respects.

Carlson, Exh. IC-4T at 52:6-10. Accordingly, it is less persuasive to rely on salaried pilots as points of comparison for establishing an appropriate DNI in this case.

[267] *See* Sevall, Exh. SS-1T at 14:16-18.

[268] *See* Carlson, Exh. IC-1T at 17:23-18:4 (noting that not all of the associations identified by PSP produced financial statements and that Carlson performed only three adjustments to the data).

[269] BE-5 at 32 (PSP response to Bench Request 5) (2019 BPC Report).

[270] *American Great Lakes Ports Ass'n v. Schultz*, 962 F.3d 510 (D.C. Cir. 2020).

[271] *Schultz*, 962 F.3d at 516.

[272] *Id.*

[273] *Id.*

152 First, unlike the Great Lakes pilots discussed in *Schultz*, PSP's historical compensation levels have not discouraged candidates from seeking to enter the training program. PSP pilot Capt. Moreno described two candidates leaving the Puget Sound and deciding to enter the San Francisco pilots' training program in 2016, noting that two candidates again made the same decision in 2018.[274] However, Capt. Moreno provides no further details regarding the basis for these candidates' decisions.

153 PMSA presents much more persuasive evidence on this issue. As Capt. Moore testifies, PSP's candidate waiting list has never been longer.[275] In fact, there is a multi-year waiting list.[276] This is explained in part by the Puget Sound's local maritime industry. There were approximately 2,000 captains, mates, and pilots working in the Puget Sound in 2019, and the 90th percentile of their income was $153,700.[277] These candidates are thus able to more than double their income by training to become a PSP pilot. Accordingly, PSP's compensation levels easily attract qualified candidates.

154 Although more than half of all potential candidates fail to pass the licensing examination,[278] there is no evidence to suggest that PSP's historical compensation levels have attracted less capable candidates than would otherwise be available. The BPC licensing examination appears to be a challenging one for candidates each year, regardless of their background in the maritime industry.[279] Similarly, there is no evidence in the record demonstrating that candidates in more highly compensated districts pass a comparable state licensing examination at a higher rate.

155 The record evidence also shows that compensation levels have had little or no effect on mid-career transfers. In fact, PSP concedes that it is rare for pilots to transfer from one pilotage district to another; Capt. Moreno was aware of only 10 pilots who made such mid-career transfers out of approximately 1,200 licensed pilots in the nation.[280] Capt. Moreno himself testified that he transferred mid-career from Alaska to the Puget

---

[274] Moreno, Exh. SM-1T at 5:21-24.

[275] Moore, Exh. MM-1Tr at 68:4-69:25.

[276] Royer, Exh. JR-13r.

[277] Ramirez, Exh. JCR-3r at 8.

[278] *See* BE-5 at 18 (PSP response to Bench Request 5) (BPC 2019 Annual Report).

[279] *See id.*

[280] Moreno, TR 412:11-19.

Sound.[281] Although Capt. Moreno was concerned about PSP pilot compensation and workload, he obtained his Washington state pilot's license in 2009 after rates were increased by the BPC.[282] Even though compensation may have been a factor in Capt. Moreno's decision, such transfers are rare, and there is no evidence to suggest that any pilots have left or plan to leave the Puget Sound district mid-career. PSP vice president Capt. Carlson conceded that no PSP pilot has surrendered their license to work in another pilotage district.[283] Once pilots are licensed in Puget Sound, the evidence overwhelmingly shows that they stay for the duration of their careers.

156 Neither does the evidence show that PSP's compensation levels have caused pilots to retire early. From 2020 to 2022, seven of PSP's current pilots will have reached the mandatory retirement age of 70.[284] Of these seven, the two pilots who reached the age of 70 prior to the evidentiary hearing in this case kept their pilot licenses until they reached the mandatory retirement age.[285] While PSP may have valid concerns about training candidates in time to replace retiring pilots, those concerns do not support a finding that PSP is experiencing, or will experience, a pilot shortage because of early retirement due to inadequate compensation. Given this evidence, or lack of it, we are not persuaded that PSP's proposed DNI of $500,000 is necessary to attract qualified candidates or to prevent attrition. PSP offers a desirable income level for captains and masters. When successful trainees join PSP's ranks, they typically stay in the Puget Sound and frequently work until the mandatory retirement age. Accordingly, we conclude that PSP has failed to demonstrate that, absent Commission approval of PSP's proposed DNI, PSP will not be able to attract and retain qualified candidates.

c. Historical Data

157 We find that the record evidence supports Staff's methodology for determining an appropriate level of DNI based on five years of data (2014-2018), adjusted for inflation of the reported amounts to the current period based on an average of actual income.[286]

---

[281] Moreno, Exh. SM-1T at 4:12-5:3.

[282] *Id.*

[283] Carlson, TR 381:17-382:4.

[284] BE-2 (PSP Response to Bench Request 2). *See also* RCW 88.16.090(2)(a)(ii) ("A person is eligible to be licensed as a pilot or a pilot trainee if the person [is] under the age of seventy years.").

[285] *Id.*

[286] Staff Initial Brief ¶¶ 44; 46.

Staff appropriately assumes that the prior rates established by the BPC were reasonable during the periods in which they were effective, which, in turn, "properly respects the division of regulatory authority between the Commission and [the BPC] by deferring to [the BPC's] policy decisions as reflected in actual outcomes under [BPC] tariffs."[287]

158 PSP argues that "Staff's proposed methodology … leaves in place the BPC's black box rate setting methodology without consideration of Capt. Quick's expert evaluation and opinions, and without analysis and consideration of the income earned by other state-regulated pilots."[288] We do not find this argument persuasive for several reasons. First, Staff's proposed methodology treats tariffs established by the BPC prior to July 1, 2019, as "tariffs set by the commission until such time as they are changed by the commission" as required by statute.[289] Accordingly, the BPC's prior methodology, "black box" or not, is irrelevant for our purposes. Its outcomes, however, form the foundation from which the Commission begins its inquiry.

159 Second, Staff did not fail to consider Capt. Quick's opinions or PSP's evidence regarding income earned by pilots in other districts. Rather, Staff evaluated PSP's testimony and exhibits and concluded that "PSP has not defined a method or criteria by which to compare pilotage districts"[290] and that "the record does not demonstrate that PSP is currently experiencing any retention or recruitment problems."[291] After careful and thorough consideration of the record evidence, the Commission reached the same conclusions.

160 We also disagree with PSP's position that Staff's proposal "lacks any objective measure of the value of pilotage services," which "inherently violates" a long-held principle that "prevents consideration of prior earnings in establishing a prospective return" and requires "that rates and the rate of return be established objectively on a prospective basis in each successive rate proceeding."[292]

---

[287] *Id.* at ¶ 47.

[288] PSP Reply Brief ¶ 12.

[289] RCW 81.116.050.

[290] Staff Reply Brief ¶ 36.

[291] *Id.* ¶ 37.

[292] PSP Reply Brief ¶ 10.

161 To support its argument, PSP relies on a 1926 U.S. Supreme Court decision,[293] *Board of Pub. Util. Comm'rs v. New York Tel. Co.,* which held that the New Jersey Board of Public Utility Commissioners (PUC) erred by denying New York Tel. Co.'s requested rate increase despite the company's demonstration that its current rates were insufficient to yield a just return. Rather than authorizing an increase to raise rates to a level sufficient to earn a reasonable return, the PUC ordered the company to offset its earnings shortfall by redirecting excess depreciation expense collected in prior periods and placed in a reserve account to invest in the company's plant, requiring it to be recognized as profit earned in the current period.

162 New York Tel. Co. argued that it could not be compelled to make up deficits in future net earnings with previously accumulated depreciation reserves. The Supreme Court agreed with the company, holding that it was not required to use its past profits to offset what would otherwise be confiscatory rates, *i.e.*, rates that are not sufficient to yield a reasonable return. PSP attempts to correlate the PUC's requirement to reallocate past earnings held in a reserve account to current profits in lieu of increasing rates to Staff's proposed methodology that relies on historical information to project a reasonable DNI in the rate year. Staff does not, however, propose to increase PSP's DNI by reallocating monies held in reserve accounts to be used as current income. PSP's argument thus fails.

163 PSP goes on to argue that Staff proposes to "leave[] in place the results of the BPC's black box rate setting methodology … in perpetuity" and that Staff urges the Commission to "reject market-based evidence of appropriate pilot income as a permanent feature of its rate setting methodology."[294] Staff does neither. Staff developed a methodology based on the evidence that PSP provided through testimony, exhibits, and data requests using the Commission's long-standing practice of relying on historical data modified for known and measurable adjustments and normalized to best reflect conditions in the rate year. Staff did not suggest the Commission ignore data related to comparable districts or data related to attracting and retaining pilots as a matter of course in all pilotage general rate proceedings. Rather, Staff recommended the Commission give little weight to the insufficient evidence PSP offered on those issues in the instant proceeding. PSP, not Staff, bears the burden to provide sufficient evidence to allow the Commission to properly conduct a comparability analysis. PSP similarly bears the burden of demonstrating that compensation levels are impacting its ability to attract and retain

[293] *Board of Pub. Util. Comm'rs v. New York Tel. Co.*, 271 U.S. 23, 46 S. Ct. 363, 70 L. Ed. 808 (1926).
[294] PSP Reply Brief ¶ 12.

pilots. PSP met neither burden in the context of this proceeding. We note, however, that PSP's failure to meet its evidentiary burden in this case in no way precludes the Commission from considering these factors in subsequent general rate proceedings.

164 Finally, we reject PSP's arguments that its proposed DNI is consistent with the Commission's "zone of reasonableness" test or the ratemaking principle of gradualism. The Commission applies a zone of reasonableness test in the context of calculating an appropriate return on equity (ROE) in general rate proceedings for regulated energy companies. The principle of gradualism similarly applies when determining appropriate ROE levels in those same proceedings. The former guides our decision in determining a reasonable range of returns based on extensive analytical modeling performed by experts. The latter works to prevent sharp increases or decreases to approved ROEs to "provide stability and assurance to investors and others regarding the regulatory environment supporting the financial integrity of the utility."[295]

165 The principle of gradualism is also used in utility cost of service and rate design to prevent rate shock. Like ROE modeling, cost of service studies require extensive data analysis and must conform to Commission rules. By contrast, PSP's DNI was not calculated according to any formula, nor was it based on analytical modeling or a data study. Rather, PSP bases its recommendation on the average pilot income for the nine pilot associations with available financial data and reduced that amount to "a more conservative DNI of $500,000" due to "the size of the overall increase required by a request that would result if we were to set our DNI level as high as $541,204."[296] Accordingly, PSP cannot reasonably argue that its proposal falls inside the "zone of reasonableness" within a range of recommendations developed from extensive analytical modeling or that it represents a gradual increase compared to existing rates.

166 On balance, we conclude that Staff's proposed DNI of $400,855 per FTE pilot is supported by the evidence in the record. We agree with Staff that "using a range of historical data allows the Commission to identify potential spikes or fluctuations in activity that may otherwise result in dramatic changes to revenue requirement if the Commission were to limit its analysis to a single year,"[297] and provides greater stability and predictability for future rate-setting. As Staff aptly observes, this approach benefits

---

[295] *WUTC v. Avista Corp., d/b/a Avista Utils.*, Dockets UE-170485 and UG-170486 (consolidated), Final Order 07 ¶ 68 (April 26, 2018).

[296] Carlson, Exh. IC-1T at 18:14-19.

[297] Staff Reply Brief ¶38.

both PSP and its ratepayers. Finally, we agree that relying on historical data strikes an appropriate balance between acknowledging BPC's regulatory authority and expertise by relying on BPC data, and performing an independent evaluation using the Commission's well-established rate setting methodologies, tools, and principles.

167 We recognize that PSP's rates have remained stagnant for five years, and that the cost of living typically increases annually due to inflation. To account for this reality, the Commission authorizes a one-time DNI increase of 2.3 percent in year two to provide a cost of living adjustment based on the 2019 Consumer Price Index for All Urban Consumers as established by the U.S. Bureau of Labor Statistics. Accordingly, the Commission authorizes a DNI of $410,075 per FTE pilot in year two.[298]

4. Retirement Expense

168 Because PSP's current retirement plan is an unfunded defined-benefit retirement program administered by PSP, [299] benefits are paid out of current operating resources rather than accumulated invested assets.[300] Individual pilots earn 1.5 service credits per year.[301] Retirement disbursements are calculated by multiplying the total number of service credits, as a percentage, with the average target net income over the final three years of service before retirement.[302] The funding required to cover the retirement payments for the current year is based on a financial audit of the prior year's retirement expenses.[303] Statutory language places the financial liability for the retirement program with PSP.[304] PSP proposes to include the annual pension obligation in its operating expenses as part of the overall revenue requirement. Staff identifies the pension expense amount as $5.3 million for the rate year. [305]

---

[298] The authorized DNI amounts per pilot represent an opportunity and not a guaranteed amount in the two-year rate plan. The actual DNI per pilot will depend on the actual number of vessel assignments and PSP's actual expenses to determine the TDNI amount.

[299] Tabler, Exh. WT-1T at 2:18.

[300] Kermode, Exh. DPK-1T at 20:11-14.

[301] Quick, Exh. GQ-1T at 22: 22.

[302] *Id.* at note 3.

[303] Tabler, Exh. WT-1T at 7:16.

[304] *Id.* at 16:8-9, 18:15-19.

[305] Kermode, Exh. DPK-1T at 21:1-4.

169 PSP witness Walter Tabler argues that unfunded defined-benefit retirement plans are favored by pilot associations across the country because they are the easiest and most transparent way to fund retirement and there are no administrative costs to the program. Additionally, because the assets are not held or invested, the plan does not create a fiduciary responsibility for PSP. Tabler asserts that all dollars collected go directly to retirees and their beneficiaries.[306]

170 Tabler argues that unfunded retirement plans, while not practical for many businesses, are appropriate when revenues are controlled through tariffs set by a regulatory body. Tabler also contends that Commission approval is required for any changes made to PSP's retirement plan, which provides further stability.[307]

171 Additionally, Tabler contends that continued funding for retirement is necessary for PSP's survival and maintaining a successful pilotage system in Washington, and notes that the BPC has always viewed funding for PSP's retirement plan as essential.[308] Tabler further argues that PSP would not be able to meet its financial obligations to individuals currently receiving benefits if funding for the retirement plan was not included in the tariff, resulting in an "unruly liquidation of the organization which would ultimately severely disrupt the delivery of pilotage services in Puget Sound."[309]

172 Finally, Tabler requests that the "Commission continue to honor the state's commitment to PSP's retirees and fund its pension expenses in rates."[310] Tabler notes that the Pilotage Act, as amended in 2009, specifically allowed the BPC to consider retirement plan costs in tariff setting and clarified that the state would not become liable for any PSP retirement obligations.[311]

173 Capt. Quick argues that the unfunded defined-benefit retirement plan is fiscally prudent, and the pay-as-you-go feature is essentially the same as Social Security because it does not involve investment of any reserve funds by a third-party fiduciary that could invest unwisely and reduce the available benefit for retired pilots. Capt. Quick further argues that the overall value of the unfunded liability is not a vested obligation, and the annual

---

[306] Tabler, Exh. WT-1T at 11:1-5.

[307] *Id.* at 11:5-9.

[308] *Id.* at 12:19-24.

[309] *Id.* at 13:18-20.

[310] *Id.* at 18:14-15

[311] *Id.* at 18:15-19.

rate is manageable because it is paid out over a long period.[312] Capt. Quick also asserts that having present day pilots fund the retirement of past pilots enhances the overall close-knit structure of the organization.[313]

174 Capt. Quick additionally argues that providing pilots with their own identifiable retirement account is the only benefit to changing to a funded retirement plan for PSP to limit the uncertainty inherent with ongoing support and approval by future rate setting bodies.[314] He asserts that, aside from the lack of a cost of living adjustment, the PSP retirement program "is well within the range of norms within the pilotage industry."[315] Finally, Capt. Quick argues that plans such as PSP's improve safety by encouraging voluntary retirement before physical or mental demands of the job force pilots to retire.[316]

175 PSP witness Steven L. Diess conducted an actuarial analysis of the program for PSP and concluded that it is both low risk and feasible into the foreseeable future.[317] Diess estimates an amount of pension expenses for the rate-year of $5.3 million, which is expected to grow to $7.1 million by 2025.[318]

176 Diess argues that "the PSP retirement plan has no investment risk, and the longevity risk is borne by the plan sponsor, as is most appropriate."[319] Based on accompanying reports and schedules, his opinion is that the PSP retirement program is viable and sustainable into the foreseeable future and that it is "hard to imagine a scenario, now or in the future, in which benefits to retirees could not be paid."[320]

177 Staff witness Kermode contends that PSP reflects the annual payments to retirees as an expense and has elected to exclude the value of the future liability from its financial

---

[312] Quick Exh. GQ-1T at 24:20-22.

[313] *Id.* at 24:13-18.

[314] *Id.* at 21: 17-22, 22: 1-3.

[315] *Id.* at 24:9-10.

[316] *Id.* at 23:13-23.

[317] Diess, Exh. SD-2.

[318] *Id.* at 2.

[319] Diess, Exh. SD-1T at 5:15-18.

[320] *Id.* at 6:1-4.

statements.[321] Kermode reports test year pension expenses of $4.8 million, which reflects 39 percent of all test year costs, the largest operating expense impacting rates.[322]

178 Staff disagrees that the PSP retirement program is funded in the same fashion as Social Security and contends that Social Security is funded by a $2.9 trillion trust account, whereas the PSP retirement program relies entirely on current earnings, and is thus completely unfunded. Additionally, Kermode argues that individuals who are eligible for Social Security payments contribute a portion of their employment earnings, whereas pilots make no individual contributions to their plan, instead relying entirely on the ratemaking process to fund the retirement program through rates.[323]

179 Kermode argues that unfunded pension plans are fiscally unsound because they are dependent on stable economic conditions. While PSP witnesses argue that there is no investment risk, Kermode contends that they fail to recognize the risk that the business will be affected by an economic downturn, such as the current economic impact of the COVID-19 pandemic. Kermode states that "a fully funded plan would not experience the same immediate impact on the plan viability that an unfunded plan experiences."[324] Kermode asserts that a good investment manager can quickly diversify investments to mitigate the impact of a declining economy, but a business cannot rapidly change its business model.[325]

180 Additionally, Kermode disputes Diess's claim that PSP's retirement program is "viable and sustainable into the foreseeable future." Kermode argues that Diess based his conclusions regarding viability of the program on perceived access to increased revenues, while also suggesting the revenues collected are contributions from the current pilots to the retirement program. Kermode argues that these revenues are clearly not contributions from active pilots, but rather contributions collected through those potentially higher rates from customers.[326]

181 Further, Kermode testifies that PSP's true financial condition and future impact of the retirement program on rates is obscured by the lack of full accrual accounting because the

---

[321] Kermode, Exh. DPK-1T at 20:18-20.

[322] *Id.* at 21:1-4.

[323] *Id.* at 21:8-16.

[324] *Id.* at 22:1-9.

[325] *Id.* at 22:10-13.

[326] *Id.* at 22:20-21, 23:1-2.

unrecorded projected benefit obligation of $124.5 million as of December 31, 2019, vastly exceeds the annual retirement payments of approximately $5 million. Kermode argues that full accrual accounting would recognize that the retirement program is underfunded by approximately $119 million.[327]

182 In the short term, Staff supports the continued use of the pay-as-you-go method to fund PSP's current retirement program and recommends that it remains a defined-benefit plan.[328] However, Kermode recommends that the Commission order PSP to transition to a fully funded, defined-benefit retirement program that will provide long-term fiscal soundness, meet the fiduciary obligations to current and future pilots, and be appropriately recorded in PSP's financial statements rather than recorded as a note to the financials. Kermode also recommends that any discussions about a proposed plan should include the possibility of active pilots contributing directly to the retirement fund.[329]

183 PMSA argues that the existing revenue collected by PSP is sufficient to fund any retirement program the pilots deem necessary, and that individual pilots have multiple outside options available for retirement income. PMSA further contends that any decision related to the PSP retirement program should not increase the tariff rates that customers pay for service.

184 PMSA witness Capt. Moore argues that the structure and funding of PSP's retirement plan are not variables of the tariff design, and that any retirement benefit "liability" exists on PSP's books only for its own internal accounting purposes.[330] Capt. Moore asserts that PSP members are currently eligible to receive retirement payments from five different sources: (1) the PSP retirement program, (2) individual Simplified Employee Pension Plan IRAs, (3) Social Security, (4) the retirement program from individual pilot's pre-PSP career employer, and (5) the PSP "equity buy-out" that is paid as a long-term capital gain over several years upon retirement.[331]

185 On rebuttal, PSP witness Capt. Carlson argues that PMSA appears to advocate that the retirement plan should be defunded, claiming that pilots' individual retirement accounts, Social Security, and other income sources are more than sufficient. Capt. Carlson asserts

---

[327] *Id.* at 23:6-13.

[328] *Id.* at 24:10-11.

[329] *Id.* at 24:16-21.

[330] Moore, Exh. MM-1Tr at 94:3-4, 17-19.

[331] *Id.* at 99:6-9; 22-24.

that these are unreasonable arguments and the Commission should reject them.[332] Capt. Carlson also testifies that historic funding of the retirement program, which included an increase in benefits, was approved by the Puget Sound Steamship Operator's Association (PSSOA) in 2001. Additionally, Capt. Carlson notes that Capt. Moore, as Executive Director of PSSOA, approved of the tariff filings made with the BPC that funded the retirement program from 2002 to 2004.[333]

186 In cross-answering testimony, Capt. Moore agrees with Staff's concern regarding the long-term viability of the unfunded defined-benefit retirement program, as well as Kermode's contention that retirement payments are not contributions from existing pilot income, but rather are generated from tariff revenue.[334]

187 Capt. Moore also agrees with Staff's recommendation that any future retirement plan should include a direct contribution from the individual pilots, as well as 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."[335] Further, Capt. Moore requests that the Commission facilitate those discussions to ensure an honest dialogue about the current retirement system and how best to design a new system that provides long-term financial stability that is equitable to all parties.[336]

188 Finally, Capt. Moore objects to the approximately $70,000 annual retirement payment for a former PSP executive director. Capt. Moore argues that a retired employee is no longer providing a benefit to ratepayers and should therefore not be included in rate reimbursable expenses.[337]

189 In its initial brief, PSP highlights Tabler's and Capt. Quick's testimony, both of which address the history of PSP's retirement program, its past treatment and approval by the BPC, and the "national predominance in pilotage associations of the pay-as-you-go model whose roots and creation predate the modern 401-K defined benefit plan and ERISA by many decades."[338] In reference to Staff's policy recommendation to transfer to

---

[332] Carlson, Exh. IC-4T at 10:14-17.

[333] *Id.* at 10:22-24.

[334] Moore, Exh. MM-42T at 44:13-22.

[335] *Id.* at 45:3-11.

[336] *Id.* at 45:12-19.

[337] Moore, Exh, MM-1Tr at 101:21-25.

[338] PSP Initial Brief ¶ 112.

a fully-funded retirement program, PSP requests that a comprehensive stakeholder evaluation and participation study occur before any changes are implemented.

190 Although PMSA supports Staff's recommendation, it requests in its initial brief that the Commission broaden the focus of the study to consider outcomes other than a defined-benefit retirement plan.[339]

Commission Determination

191 We adopt Staff's recommendation to maintain the current pay-as-you-go program, but order PSP to initiate discussions for the purpose of developing a plan to transition to a fully funded, defined-benefit retirement plan, as well as full accrual accounting. By way of guidance, the retirement plan discussions should include, as PSP proposes, a comprehensive stakeholder evaluation and a participation study. We further require the discussions to address whether active pilots should be required to contribute directly to PSP's retirement fund.

192 We decline, however, to "broker" the dialogue, as PMSA requests. The discussions should be conducted as workshops facilitated by a mutually acceptable third-party with expertise in retirement planning, such as an actuary, and should be concluded prior to PSP's next general rate case. To maintain fairness and avoid any appearance of pre-approval, the Commissioners will not participate in the workshops but will evaluate any final recommendations proposed for review and approval. Specifically, any agreements, recommendations, or contested issues that arise from the workshops, and PSP's responses thereto, should be included in PSP's initial filing in its next general rate case.

193 We also deny PMSA's request to require PSP's participation study to consider outcomes other than a defined-benefit plan. The workshop participants, rather than the Commission, should determine the scope and breadth of the study. PMSA is welcome to advocate for the inclusion of other retirement options in PSP's study, but we are not persuaded that prescribing its contents at this juncture, without the benefit of initial stakeholder discussions, would be appropriate or productive.

194 We agree with Staff's assessment that PSP's current retirement plan is not comparable to Social Security because, unlike Social Security, the pilots do not make individual contributions. In addition, PSP's pension is entirely unfunded rather than backed by a trust account. As Staff correctly observes, such a plan is fiscally unsound and vulnerable

---

[339] PMSA Initial Brief ¶¶ 80-81.

to changing economic conditions. Accordingly, we find that a fully funded, defined-benefit retirement plan will best provide "security and confidence in the long-term viability of the promised retirement benefits to current and future pilots."[340]

195 Finally, because we require the parties and stakeholders to engage in further discussions and bring forward proposed solutions at a later date, we decline to exclude from rates the $70,000 annual retirement payment for PSP's former executive director and instead direct the parties to address this issue during the required workshops.

5. Callbacks

196 Individual pilots serve, on an on-call basis, for 15 consecutive days (24 hour periods), followed by 13 days of respite.[341] Statutory rest rules may limit the amount of time pilots work when on-call.[342] However, during peak traffic times, when no on-call pilots are available, vessel movements are offered to pilots on respite.[343] When pilots take assignments during respite they receive two days of compensatory time or "callback days" for each assignment taken.[344] PSP's callback system is effectively a banked "overtime program," which allows a pilot who is called back during their required respite period to earn compensatory days off for having answered a callback service request.[345]

197 Current PSP policy allows callback days to be taken by pilots as future leave, or to be banked and taken at the end of their careers (referred to as "burning callback") prior to retirement. PSP witness Capt. Carlson testifies that some pilots accumulate enough callback days that they are able to effectively retire before the mandatory age of 70.[346] During the callback "burning" period, pilots may either keep or surrender their license.[347] In instances where a pilot opts to keep their license, an additional assignment burden is placed on the remaining pilots because the total number of pilots available for duty is reduced. The option to "bank" or "burn" callback has resulted in an approximate

---

[340] Kermode, Exh. DPK-1T at 24:18-20.

[341] Carlson, Exh. IC-1T at 5:7-11.

[342] *Id.* at 5:16-19.

[343] Tabler, Exh. WT-1T at 18:22-24.

[344] Carlson, Exh. IC-2.

[345] Quick, Exh. GQ-1T at 26:23-24, 27:1-2.

[346] Carlson, Exh. IC-1T at 10:11-14.

[347] *Id.* at 14:6-14.

unrecorded liability of $7 million.[348] PSP proposes that this practice continue, but requests to incorporate the liability for callback days currently being "burned" into the revenue requirement. PSP seeks funding for approximately 4.7 percent of the previously accumulated callback days in its revenue requirement.[349]

198 PSP witness Capt. Quick testifies that PSP is staffed to average demand levels rather than peak demand levels, which requires the use of callback days to provide the necessary pilot capacity during peak demand periods.[350] According to Capt. Quick, on a national level, pilot districts typically staff to peak demand to avoid shipping delay.[351]

199 PSP witness Capt. Carlson testifies that PSP is obligated to move ships on time and without delay when possible, stating that historically PSP's on-time vessel movement rate has been over 99.9 percent. According to Capt. Carlson, however, the number of active working pilots has been insufficient to meet PSP's previous on-time rate since 2018, resulting in PSP's increased reliance on the practice of calling back off-duty pilots to perform assignments.[352]

200 Additionally, Capt. Carlson argues that the mandatory rest period exacerbates the demand for callbacks and results in increased cumulative pilot fatigue from ongoing interruptions of respite time. Capt. Carlson asserts that accepting a callback assignment will disrupt a pilot's off-duty time by nearly two days due to factors such as proper rest prior to accepting the assignment, average assignment time, and the mandatory 10-hour rest period after the assignment is completed.[353]

201 Capt. Carlson contends that the primary issue that increases reliance on callbacks is the current pilot shortage, and that if PSP were properly staffed, callbacks would only occur for a small percentage of assignments.[354] As discussed above, Capt. Carlson attributes the current pilot shortage to the BPC's decision to set the number of licensed pilots too low, legislative changes regarding rest periods and maximum shift hours, the number of

---

[348] Norris, Exh. JN-1T at 2:19-21.

[349] Carlson, Exh. IC-4T at 8:23-24, 9:1.

[350] Quick, Exh. GQ-1T at 27:19-22.

[351] *Id.* at 27:12-15.

[352] Carlson, Exh IC-1T at 7:5-12, 16-18.

[353] *Id.* at 9:6-21.

[354] *Id.* at 8:17-20.

trainees who are unable to complete the training program, and pilots who have become medically unfit for duty.[355]

202 Capt. Carlson argues that callback days create a liability for PSP because every pilot who uses a callback day is owed compensation from PSP revenues but is unavailable to move vessels, resulting in increased workload on the remaining pilots and diminishing earnings as the callback days are "burned."[356] Capt. Carlson states that current PSP operating rules do not limit the number of callback days a pilot can accumulate. According to Capt. Carlson, this rule was modified in recent years in order to ensure increased pilot availability to meet vessel traffic demands.[357] He states that at the time PSP filed its initial case, there were 3,493 callback days on the books.[358]

203 PSP witness Tabler argues that the callback system provides direct cost savings to ratepayers in several ways, including lowering the overall revenue requirement by maintaining a reduced number of pilots required to provide on-time service during peak traffic periods. Additionally, Tabler asserts that a significant number of callback days do not require additional tariff funding because pilots use them during their career. Finally, Tabler testifies that the callback system ensures timely pilotage service to customers even when there are no on-duty pilots available, limiting ship delays and the associated financial impacts.[359] Tabler argues that "without the callback system, the ship[s] would be delayed, increasing the cost to the carrier[s] that would far exceed the incremental cost of funding a callback day."[360]

204 Staff is concerned with PSP's accounting treatment of callback days. Staff witness Kermode recommends that the callback liability be reflected on PSP's financial statements and that any financial statements or other financial information filed with the Commission be consistent with generally accepted accounting principles (GAAP).[361]

---

[355] *Id.* at 7:20-24, 21:1-2.

[356] *Id.* at 10:18-21.

[357] *Id.* at 10:24-24, 11:1-8. Prior to 2018, pilots were limited to banking 60 callback days per year and required to use any excess days within the calendar year.

[358] *Id.* at 11:17-18.

[359] Tabler, Exh. WT-1T at 20:3-11.

[360] *Id.* at 20:11-13.

[361] Kermode, Exh. DPK-1T at 3:18-22.

205 Kermode argues that PSP's position that callback days are unfunded is incorrect because the callback is fully funded when a customer pays for a tariffed service provided by a pilot on a callback assignment. Kermode contends that adding a charge for callback days is effectively a type of double payment, and that there is no basis for this additional charge.[362] Kermode further argues that, because the individual pilots are sole proprietors and corporations, they cannot be considered PSP employees, and therefore cannot receive employee-related benefits such as overtime.[363]

206 Kermode argues that standard accounting principles would recognize PSP's revenue from callback assignments, which includes the associated cost of the compensation day, by increasing both accounts receivable and revenue. Kermode asserts that, under the modified cash basis of accounting that PSP employs, there is no accounting transaction performed to recognize the creation of the liability associated with the compensation day. Instead, Kermode explains, an off-the-books memo is recorded to track the accumulation of earned callback days, which overstates the annual revenues and results in a larger TDNI instead of recording the additional revenues as an obligation to fund the "burning" of future compensation days.[364]

207 Kermode also disputes PSP's claim that many companies regulated by the Commission use a cash or modified cash basis for accounting. Kermode argues that only the smallest regulated companies provide their financial statements using a cash or modified cash basis. By contrast, Kermode observes that the two largest Commission-regulated water companies, which have total revenues of $7.1 million and $12.9 million, use full GAAP accrual basis accounting. Kermode recommends the Commission require PSP to use full accrual accounting consistent with GAAP for all future filings because PSP's annual gross revenues exceed $30 million.[365]

208 Finally, Kermode asserts that PSP's estimated callback liability value is artificially inflated because it is based on PSP's most recent DNI level, which changes over time. Kermode contends that the callback liability should be valued based on DNI levels at the time the compensation day is earned, reflecting the same amount that would be recorded in an accrual-basis journal entry.[366] Kermode acknowledges, however, that all prior

---

[362] *Id.* at 14:13-22.

[363] *Id.* at 16:11-17.

[364] *Id.* at 16: 18-22; 17:1-5.

[365] *Id.* at 15:18-23; 16:1-6.

[366] *Id.* at 18:6-15.

callback liability must be valued based on PSP's most recent financial statements and accounting memos because PSP lacks the information required to record the historical liability as Staff recommends.[367]

209 PMSA witness Capt. Moore testifies that between 2010 and 2019, callback assignments have increased from 165 to 1,377 per year, an increase from 2.2 to 19.7 percent of all assignments during that time period.[368] Capt. Moore observes that callback assignments have continued to increase since 2015 even though the number of annual assignments have decreased during that same period.

210 According to Capt. Moore, the current callback system serves as a disincentive to reduce callbacks by rewarding pilots with compensation days for accepting a callback assignment rather than encouraging all pilots to accept assignments at the same or similar levels.[369] Capt. Moore asserts that efficient watch scheduling, dispatch rules, and management aimed at encouraging pilots to maximize their availability while on watch are all necessary to reduce callback assignments.[370] Further, Capt. Moore contends that increasing funding for callbacks will only serve to exacerbate the problem of callback liability, as evidenced by the strong correlation between callback assignments and average revenue per assignment. Capt. Moore opposes any approach that funds additional FTE pilots to address what he argues is an inefficient dispatch and assignment system.[371] Accordingly, Capt. Moore recommends the Commission conduct a study to help identify natural incentives for efficiency that will maximize pilot availability at the lowest cost.[372]

211 Finally, Capt. Moore argues that because ratepayers pay the same tariffed rate for service regardless of whether the pilot is on watch or performing a callback assignment, the financial liability exists only on PSP's books. According to Capt. Moore, recognizing the liability in PSP's revenue requirement would result in double payment for the same

---

[367] *Id.* at 18:18-21.

[368] Moore, Exh. MM-1Tr at 56:3-18.

[369] *Id.* at 58:13-19.

[370] *Id.* at 58:21-24.

[371] *Id.* at 58:25-26, 59:1-3, 62:14-26.

[372] *Id.* at 61:21-25, 64:21-23. *See also* Moore, Exh. MM-22 (discussing workloads of selected pilots); Moore, Exh. MM-23 (same).

service: first by the customer who received the tariffed service, and again by all customers subject to rates that incorporate PSP's liability for callback days.[373]

212 In rebuttal testimony, PSP witness Capt. Carlson testifies that PSP evaluated the current callback day accumulation to determine if additional funding existed. Capt. Carlson contends that PSP's evaluation demonstrated that a significant portion of a pilot's workload is performed while off-duty, but the tariff rates do not reflect this additional work. Capt. Carlson argues that the only funding the BPC ever provided was for additional pilots "burning" callback days prior to retirement. Accordingly, PSP strongly disputes that there is any double payment for callback days and it continues to seek recovery of its callback day liability because it is a known and measurable rate year expense.[374]

213 PSP witness Dr. Khawaja argues that the value of a pilot's service should be based upon a fixed amount of work performed while on duty, and that when a pilot performs additional work there should be additional compensation. Dr. Khawaja argues that "the value of the additional work in the form of callbacks should be part of the revenue requirement."[375] Dr. Khawaja proposes that callbacks can be eliminated or reduced by hiring additional pilots, or the Commission can approve a "retirement" benefit in rates.[376] Dr. Khawaja argues that there is no incentive to accept callback assignments without additional compensation, which should be accounted for in the revenue requirement.[377]

214 Dr. Khawaja agrees with Staff's testimony that additional funding alone does not reduce callbacks or avoid fatigue, but argues that accepting PSP's model will provide appropriate funding for the additional work each callback represents in the revenue requirement.[378] Dr. Khawaja argues that DNI should be distributed for on-duty time, not for total time, and that accepting Staff's methodology would place the entire burden of

---

[373] Moore, Exh. MM-1Tr at 59:15-26.

[374] Carlson, Exh. IC-4T at 6:4-8:17. The evaluation of the current callback accumulation is provided for Commission review in exhibit IC-27.

[375] Khawaja, Exh. SK-3T at 2:17-25.

[376] *Id.* at 2:25, 3:1-2.

[377] *Id.* at 3:3-6.

[378] *Id.* at 7:10-12.

callbacks on the individual pilots forced to work numerous callback assignments for no additional compensation.[379]

215 Finally, Dr. Khawaja argues that the same revenue would be collected under PSP's revenue requirement model regardless of whether there are sufficient pilots and no callbacks performed, or insufficient pilots and pilots performing callback assignments. Dr. Khawaja asserts that the total revenue collected from the customer is the same in both scenarios because the total assignment level is the same, so no double counting occurs.[380]

216 PSP witness Jessica Norris contends on rebuttal that PSP's financials are performed on a modified accrual (not modified cash) basis, contrary to Kermode's testimony. Norris further asserts that PSP's federal income tax return is also submitted on an accrual basis, and all revenue generated by PSP is recognized on an accrual basis comparable to GAAP.[381]

217 Norris further argues that simply backing out the funding for callback days, as required by accrual-based accounting, would not fully address the callback liability. Instead, Norris contends, this approach ignores the need to compensate pilots for "overtime" when they work an off-duty day to meet their obligation to provide pilotage services without delay.[382] Norris argues that drastically changing the accounting practices for callbacks should be thoroughly evaluated and vetted with Staff and the Commission because it would require a complete shift from PSP's historical practices.[383]

218 In cross-answering testimony, PMSA witness Capt. Moore agrees with Staff that increasing the revenue requirement to account for callback days is an inappropriate double payment for services already rendered.[384] Capt. Moore argues that a pilot is fully compensated when a customer pays for tariffed service regardless of how PSP determines to subsequently distribute revenues generated by that customer among its members.[385]

---

[379] *Id.* at 11:16-21.

[380] *Id.* at 3:16-25, 4:1-9.

[381] Norris, Exh. JN-6T at 2:2-8.

[382] *Id.* at 3:7-16.

[383] *Id.* at 4:20-25.

[384] Moore, Exh. MM-42T at 43:17-19.

[385] *Id.* at 44:1-4.

219 In its initial brief, PSP argues that recognizing approximately $6.9 million in callback liability effectively would render PSP insolvent, threatening its credit worthiness and hindering its ability to obtain funding to replace two aging pilot vessels. In PSP's view, "penetrating that black box of rate setting practices and rationale and adapting to accrual accounting, uniform system of accounts, and most importantly eliminating off-balance sheet liabilities allowed to grow over multiple decades, requires thoughtful precision and thorough consideration of the impact on the continuing viability" of PSP's ability to conform to conventional ratemaking and accounting methods.[386]

220 PMSA argues in its initial brief that PSP's "callback liability" is a fiction that PSP created due to its own internal decisions rather than a function of the tariff. PMSA agrees with Staff that vessels have already paid tariff rates for services, and that the tariff should not be increased so that vessels end up paying twice for the same service. PMSA argues that callbacks are created by PSP's workload pooling arrangements rather than a pilot shortage, as PSP contends. PMSA further argues that PSP's internal accounting for callbacks results in charges assessed to vessels that did not obtain the benefit of the past pilotage services that created the callback liability. PMSA recommends PSP address the issue of excessive callback accumulation by instituting management controls restricting pilots from choosing when they prefer not to work. Finally, PMSA argues that because PSP already received payment for the callback assignment, any additional charge violates the Tonnage Clause of the U.S. Constitution.

221 Staff argues in its initial brief that the Commission should reject PSP's proposed TAL, which PSP states is designed to include additional compensation for callback assignments, because including additional costs for past callback assignments is unreasonable, results in retroactive ratemaking, and allows double recovery of costs associated with callbacks. PSP's revenue shortfall, Staff contends, stems from PSP's decision to distribute income generated by the callback assignment to its members in the period collected instead of deferring the income for distribution in the period the callback is claimed. Staff maintains that PSP can amend its bylaws to allow it to defer revenue when a callback assignment is performed and can implement controls to manage pilot availability and avoid shortfalls from pilots burning callback days prior to retirement.

222 In its reply brief, PSP argues that Staff's proposal cannot result in rates that are fair, just, reasonable, and sufficient "because they do not place value on any of the off-watch callbacks that pilots perform, or the significant non-revenue activities pilots must

---

[386] PSP Initial Brief ¶ 124.

contribute to ensure a competent, efficient, and reliable pilotage service."[387] PSP also takes issue with Staff's claim that PSP proposes to fund previously earned callback days through its proposed TAL. Rather, PSP asserts that it proposes to fund additional pilots to recover its callback liability and prevent further callback liabilities from accruing by funding callback days when they are earned under the new tariff structure. PSP similarly refutes PMSA's argument that PSP is attempting to recover its accrued callback liability by funding "fictitious pilots."[388]

223 Staff maintains in its reply brief that deferring revenue associated with callback days until the callback day is claimed is fair and reasonable, and that PSP has failed to demonstrate a legitimate rationale for incurring additional income for callback days. Staff further contends that PSP has not shown that its approach for managing callbacks is the most effective or reasonable, and that PSP has no reasonable expectation of receiving additional revenue to offset the decrease in individual DNI caused by pilots "burning" callbacks. Staff argues that the Commission should exclude historical callback recovery from rates because increasing pilot compensation would create an incentive for PSP to rely on callbacks rather than to reduce them. Although Staff agrees that callbacks are a product of an average-demand staffing system, Staff attributes the number of callbacks to PSP's watch rotation staffing decisions rather than BPC's decision to staff at levels below peak demand.

224 Finally, Staff argues that its proposed revenue requirement funds all prospective callback assignments by using an implied approximate 52-pilot count to ensure sufficient funding for both on watch and callback assignments.

Commission Determination

225 We deny PSP's request to include 61.6 FTE pilots in the revenue requirement as a means to compensate pilots for callback assignments. Although PSP has chosen to compensate pilots for callback assignments with "callback days," we find that callbacks are fully funded at the time a vessel pays for pilotage services. To allow PSP to recover its "callback liability" in future rates would cause ratepayers to pay twice for services rendered, which violates basic ratemaking principles. We elaborate this point further, below.

---

[387] PSP Reply Brief ¶ 27.

[388] *Id.* at ¶ 43.

226 PSP's current callback system was created in response to the BPC's decision to staff the Puget Sound pilotage district based on average vessel traffic rather than peak vessel traffic.[389] By staffing at this lower level, vessels benefit from lower rates.[390] But average-demand level staffing necessarily increases callback assignments to limit vessel traffic delays. Commendably, PSP has limited vessel delays despite average-demand level staffing. Capt. Carlson testifies that, in recent years, PSP has completed 99.9 percent of vessel movements on time.[391] PMSA witness Capt. Moore likewise testifies that vessel delays are infrequent and represent less than 1 percent of vessel movements.[392]

227 To provide pilots an incentive to accept callback assignments, PSP compensates pilots with "callback days." The pilot receives one day off in exchange for taking the callback assignment, and an additional day off as compensation for the taking the callback assignment. In essence, a pilot works one day in exchange for two days of distribution from PSP's income.[393] As Capt. Quick describes it, the callback system is essentially a "banked overtime program."[394] Because pilots may bank callback days for later use, or use accumulated callback days immediately prior to retirement, an additional burden is placed on working pilots as PSP continues to distribute income to non-working pilots who are "burning" callback days.[395]

228 We observe that the BPC has not treated callbacks or callback day liability consistently over time. In 2000 and 2005, the BPC approved a joint motion of the parties, which included "compensation for accrued Comp Days."[396] PSP describes this measure as funding only callback "burning" prior to a pilot's retirement.[397] In 2001, however, the BPC approved a tariff increase without adopting any specific revenue requirements.[398] More recently, BPC rate setting decisions have approved "black box" settlements that

---

[389] Quick, Exh. GQ-1T at 27:19-22.

[390] *See id.* at 27:12-15.

[391] Carlson, Exh IC-1T at 7:15-16.

[392] Moore, Exh. MM-1Tr at 91:25, 92:1-2.

[393] Norris, TR 230:18-20.

[394] Quick, Exh. GQ-1T at 26:23-24.

[395] Norris, Exh. JN-1T at 2:19-21.

[396] Kermode, Exh. DPK-15X at 1 (adopting the joint proposal of the parties including "compensation for accrued Comp Days"). *Accord* Kermode, Exh. DPK-14X at 2.

[397] PSP Initial Brief ¶ 75.

[398] Kermode, Exh. DPK-13X at 1.

approve a final revenue requirement without providing the underlying calculations or adjustments.[399] PSP continues to rely on callbacks, but the parties disagree about whether or how these assignments should be recognized in PSP's revenue requirement.

229 Because the Legislature has transferred rate-setting authority to the Commission, we consider the issue of callback assignments and associated callback days in light of foundational rate-setting principles.

230 We begin by distinguishing between the need for callback assignments and PSP's choice to compensate pilots with "callback days" for accepting these assignments. The parties present conflicting evidence related to the need for callback assignments, which is tied to their respective arguments regarding PSP's watch schedule and dispatch system. As we noted above in Section II.C.2, it is difficult to evaluate PSP's organizational efficiency, and individual pilot workloads vary widely. It is difficult to ascertain when callbacks assignments are warranted under this system. Because the purpose of economic regulation is to promote efficiency rather than direct internal management decisions, we reiterate our earlier recommendation that PSP retain an outside consultant to evaluate potential efficiencies. As the rate-setting authority, we are concerned only with PSP's past decision to implement a banked compensatory program under the assumption that future vessel traffic would fund that program, and whether or how this practice should be reflected in rates.

231 PSP acknowledges that the BPC has previously funded only the burning of callback days prior to retirement, and not the use of callback days taken over the course of a pilot's career.[400] However, PSP proposes a significant expansion of its revenue requirement to compensate pilots for *all* callback assignments. PSP proposes a three-year rate plan, premised on the Commission funding 61.6 FTE pilots.[401] PSP specifically justifies funding 61.6 FTE pilots because this would represent near-peak staffing, where callback assignments are no longer necessary.[402] PSP claims that this structure is the only fair way to compensate pilots for the value of their work, and that it would appropriately fund PSP's accrued liability for callback days.[403] We disagree.

[399] Kermode, Exh. DPK-1Tr at 5:9:11.

[400] PSP Initial Brief ¶ 75.

[401] *E.g.*, Khawaja, Exh. SK-1T at 9:16-17.

[402] *Id.* ¶¶ 70-73.

[403] *Id.*

232 First, PSP must recognize the effects of its decision to create a banked compensatory program by deferring income associated with callback assignments. To date, PSP has distributed the revenue collected from callback assignments to pilots without providing funding for pilots "burning" callback days prior to retirement.[404] This overstates revenues during the year of the callback assignment and creates a liability, which varies according to the time period in which the pilot uses their callback day to receive a share of distribution without accepting assignments.

233 Second, Staff and PMSA correctly observe that funding callback day "burning" in the revenue requirement would amount to double payment.[405] As Capt. Moore testifies, capturing the accrued callback liability in the revenue requirement going forward would require two payments for the same pilotage service: "first by the vessel that actually hired the pilot at the time the service was provided, and second by all of the vessels subject to a new and higher rate at a future time under a future tariff for many future years to come."[406] To the extent that PSP proposes to increase the number of funded pilots as a means to recover accrued callback liability,[407] it proposes that vessels pay twice for pilotage services. We agree with PMSA that PSP should not include an additional charge to vessels for callbacks "simply because PSP decided to convert it into a unique form of unfunded deferred compensation in its own accounting."[408] It is reasonable to compensate the actual, licensed pilots for the additional work they perform when pilot numbers fall below the appropriate number of funded pilots. Directly funding callback day "burning," however, unreasonably requires vessels to pay twice for pilotage services.

234 Third, we are concerned with PSP's proposal to fund a number of implied pilots greater than the number that the BPC has deemed necessary for the provision of pilotage services in the Puget Sound pilotage district. Pro forma adjustments to the test year must reflect known and measurable expenses, and 61.6 pilots is not a known and measurable number of pilots. The BPC, not the Commission, is charged with determining the number of pilots necessary for efficient, safe pilotage service,[409] and the BPC has currently set that

[404] Kermode, Exh. DPK-1T at 16: 18-22; 17:1-5.

[405] *See id.* at 19:14-16.

[406] Moore, Exh. MM-1Tr at 59:24-26.

[407] *E.g.*, PSP Initial Brief ¶ 72.

[408] PMSA Corrected Initial Brief ¶ 64.

[409] RCW 88.16.035(1)(d).

number at 56.[410] As we discussed above in Section II.C.2, we adopt Staff's proposal and fund 52 FTE pilots, implemented incrementally over two years. Our decision is informed by the BPC's determinations based on safety and risk, which, in turn, inform the valuation of pilotage service in the Puget Sound. PSP's proposal to fund 61.6 FTE pilots is based on a TAL that was rejected by the BPC and an alternative view of the NASA fatigue study, which the BPC has not yet adopted. PSP's proposal would thus result in an over-valuation of all vessel assignments, including callbacks, and would unjustly require vessels to pay for an implied number of pilots that exceeds the number the BPC has authorized.

235 We are instead persuaded by Staff's proposals. Staff submits that pilots receive adequate compensation for their work through a DNI distribution system that values all assignments equally, whether they are performed on watch or as callbacks.[411] As Staff witness Kermode explains, there is no basis for an additional charge to the vessel merely because the pilot defers his or her compensation for that service until retirement.[412]

236 Kermode persuasively testifies that various accounting methods are like lenses, each of which provides a different view of PSP's financial statements. By using accrual method accounting based on GAAP principles, "[t]he underlying financial position of the company does not change at all. We're merely allowing the Commission to have a clear view of where it is."[413] PSP may continue to use other accounting methods for submitting reports in other contexts, but full accrual method accounting, which gives the Commission the clearest picture, should be used to record callback liabilities in the period in which they occur.[414] In other words, PSP must defer the revenue from a callback assignment in order to properly attribute the costs to the vessel that caused PSP to incur the expense at the time the expense was incurred.

237 Staff's proposals also align with foundational rate-setting principles. The principle of cost causation assigns costs to those ratepayers who cause the expenses to occur.[415] Vessels should pay for tariff rates that appropriately reflect the cost of maintaining compulsory pilotage in the Puget Sound pilotage district. As discussed above, rates that fund 52 FTE

---

[410] Carlson, Exh. IC-1T at 16:4-6.

[411] Sevall, TR 638:23, 640:9.

[412] Kermode, Exh. DPK-1Tr at 14:17-21.

[413] Kermode, TR 566:12-17.

[414] *Id.* at 567:1-7.

[415] *See WUTC v. Puget Sound Energy*, Dockets UE-190529 and UG-190530 (consolidated) ¶ 484.

pilots, implemented incrementally over two years, best represent the costs of providing pilotage service in the Puget Sound district by reflecting the reality of the pace at which pilots are licensed and valuing pilotage service based on BPC's determinations related to safety and efficiency.

238 We also conclude that Staff's proposal avoids creating intergenerational inequities.[416] PSP's historical practice has overdistributed revenue during the year of a callback assignment under the assumption that later ratepayers will compensate the organization for this banked overtime. Yet a vessel calling on the Puget Sound pilotage district should not be compelled to pay pilotage rates that include non-working pilots who earned callback days from assignments that may have occurred years earlier. This practice requires vessels to subsidize PSP's decision to overdistribute revenue in earlier years.

239 Full accrual method accounting of callback liability still provides PSP with fair value for member pilot labor. Staff's proposal recognizes that more than the current number of working pilots are needed to complete the projected number of annual assignments. Staff therefore proposes to fund 51.98 FTE pilots. As Staff witness Sevall explains, funding an appropriate level of pilots based on Staff's TAL "means there's approximately $2 million of earnings that is being put into rates to account for the extra work that we expect the pilots to do."[417] Sevall further explains that Staff is "not asking 48 pilots to work overtime and work their hardest without pay. We're actually putting that into rates."[418] Staff's proposal acknowledges the additional work PSP pilots perform through callback assignments through higher compensation.

240 Therefore, we adopt Staff's proposal to address PSP's callback liability. By providing a two-year rate plan for PSP to incrementally increase its revenue requirement to fund 52 FTE pilots, the actual working pilots are compensated for working callback assignments through higher rates. Vessels are appropriately charged one time for a vessel movement based on the level of pilots deemed necessary for safe, efficient pilotage in the Puget Sound district. Consequently, vessels are not held responsible for the "burning" of callback days and are not charged twice for pilotage services.

---

[416] *See WUTC v. Puget Sound Energy*, Dockets UE-170033 and UG-170034 Order 08 ¶ 131 (December 5, 2017) (discussing the problem of intergenerational inequities).

[417] Sevall, TR 592:1-5.

[418] *Id.*

6. Expense Adjustments

241 PSP seeks to recoup in rates certain expenses, including individual business expenses and pilot transportation expenses.

242 PSP witness Burton testifies that PSP is seeking to recover $15.8 million in expenses in rate years one and two, and $15.4 million in expenses for rate year three. Burton provides pro forma statements of operations detailing the numerous individual expenses for which PSP seeks recovery.[419]

243 Burton contends that the expenses shown in the pro forma statement of operations reflect an increase of approximately 12.5 percent in years one and two over current rates. Burton notes that the pro forma statements of operations also include a rate case fee of $375,000, spread equally over the three years, which PSP is responsible for remitting to the Commission.[420]

244 Finally, Burton testifies that restating adjustments remove expenses not allowed in regulatory accounting and more accurately reflect the 12-month test period by modifying historic operating results where PSP's accounting methods differ from accepted regulatory practice.[421] Burton argues that pro forma adjustments identify known and measurable changes in revenues and/or expenses that are not mitigated by any other factors.[422] Burton provides the detailed restating adjustments in the pro forma statements of operations for each of the three rate years.[423]

245 In response, Staff witness Ann LaRue contests five of PSP's restating and pro forma adjustments related to depreciation, transportation, entertainment and travel, legal expenses, and consulting fees. PMSA also contests a number of PSP's proposed expenses, including expenses for medical insurance, transportation, legal fees, self-insurance, consulting fees, entertainment and travel, and leasing. We address each contested expense adjustment in turn.

---

[419] *See* Burton, Exh. WTB-3, Exh. WTB-4, and Exh. WTB-5.

[420] Burton, Exh. WTB-1T at 7:21-25.

[421] *Id.* at 8:6-11.

[422] *Id.* at 9:20-21.

[423] Burton, Exh. WTB-3; Burton, Exh. WTB-4; and Burton, Exh.WTB-5.

i. Medical Insurance Expense

246 PMSA witness Capt. Moore argues that PSP's expense for pilot medical insurance coverage is non-essential because the expense is not a component of vessel service and PSP is not an employer.[424] Capt. Moore argues that medical insurance is a private business expense, the responsibility for which should be borne by each independent contractor pilot or pilot corporation. PMSA also takes issue with PSP's "inconsistent" treatment of office expenses as benefits because medical insurance benefits "are included in the $10.2 million 'Seattle Office Operating Expense' category … [b]ut benefits paid to pilots are neither an 'Operating Expense' nor are they an 'office expense.' Just as other cost categories are in the PSP Financials, these benefits should be clearly segregated as pilot benefits … and should not be presented as part of the overhead of running a specific office location."[425]

247 In rebuttal testimony, PSP witness Burton disagrees with Capt. Moore's characterization of medical insurance coverage as "non-essential." Burton argues that, in his experience, "medical benefits are a customary operating expense for public service companies and are routinely recovered in rates authorized by the Commission."[426] Burton further contends that PSP, rather than individual pilots, incurs this expense directly. Burton compares the pilots to owners who work for their companies and receive employee benefits, which, he contends, is reasonable.

248 In its initial brief, PMSA argues that PSP should report pilot compensation separately from its operating expenses, and that all direct compensation payments made to pilots, including medical benefits, should be included in this expense category. PMSA also requests that the Commission order a performance audit to analyze the value of PSP's medical coverage versus alternative plans to assess whether PSP's medical benefits are reasonable or excessive.

Commission Determination

249 We accept PSP's proposed restating and pro forma adjustments for the medical insurance expenses of PSP employees, who are not member pilots. As Burton testified, the

---

[424] Moore, Exh. MM-1Tr at 101:13-19.

[425] *Id.* at 105:8-19.

[426] Burton, Exh. WTB-14T at 5:5-9.

Collective Bargaining Agreement Between Puget Sound Pilots and the Inlandboatmen's Union of the Pacific contract resulted in a $14,438 increase in costs for the rate year.[427]

250 With respect to PSP member pilots, we reach a different conclusion. We begin by looking to PSP's own description of its organizational structure. As PSP President vonBrandenfels explains, pilots in the Puget Sound pilotage district, as in many other pilotage districts, act as independent contractors.[428] The pilots form an association in order to provide centralized dispatch, billing, and business services.[429] PSP's own bylaws provide that each member pilot acts "independently, for profit or loss, but sharing common services for their mutual interest in the carrying out of a function of providing logistical support, short of actual pilotage of vessels, for Pilots and Members herein."[430] The bylaws provide that "[t]he Association is not intended to be a partnership of any kind."[431] This organizational structure militates against any expectation that PSP should provide medical insurance for member pilots. The pilots are neither employees nor partners.

251 PMSA witness Capt. Moore notes that pilots, as individual business entities, may prefer different levels of coverage.[432] We agree that this is an appropriate judgment for each member pilot to make. This is consistent with pilots' positions as independent contractors.

252 PMSA witness Capt. Moore also notes that medical insurance expenses were traditionally left to each independent pilot or pilot corporation.[433] PSP does not rebut this contention. We take this as further evidence that member pilots should begin to assume responsibility for medical insurance payments.

253 PSP witness Burton contends that public service companies are allowed to recover the expenses of medical coverage in rates.[434] Burton submits that these employee health

---

[427] Burton, Exh. WTB-1T at 10:2-4.

[428] vonBrandenfels, Exh. EVB-1T at 14:6.

[429] *Id.* at 14:12-23.

[430] vonBrandenfels, Exh. EVB-5X at 2 (PSP Bylaws, November 2018, § 2.2).

[431] *Id.*

[432] Moore, Exh. MM-42T at 12:17-24.

[433] Moore, Exh. MM-1Tr at 101:15-19.

[434] Burton, Exh. WTB-14T at 5:5-19.

plans typically extend to the owners of the company.[435] We agree that PSP should be able to recover the cost of medical insurance for its employees, such as Seattle office staff and employees at the Port Angeles pilot station. PSP's member pilots, however, are not employees. Neither have the pilots formed a legal partnership. Although the pilots have an ownership interest in PSP, they have chosen to organize as independent contractors who act "independently, for profit or loss" but share common services out of shared interest.[436] It is fair, just, and reasonable for these independent contractors to transition to paying for medical coverage through their DNI rather than PSP paying that expense on the pilots' behalf from PSP's organizational operating expenses.

254 For these reasons, we determine that PSP should begin transitioning pilot medical insurance expenses directly to the pilots, who should pay a portion of their individual premiums from their DNI distribution. Accordingly, PSP may include the full value of pilot medical insurance expense in its revenue requirement by recognizing $1,711,128 in pilot medical insurance expenses as an operating expense in year one of the Commission's two-year rate-plan. In year two, however, PSP may include only 50 percent of the value of pilot medical insurance expenses in its revenue requirement. The remaining 50 percent of pilot medical insurance expenses should be accounted for as pilot compensation rather than an operating expense, as they are now.[437] After the two-year rate plan, we expect PSP pilots to fully fund their medical insurance expenses from the compensation received through the DNI.

ii. Transportation Expense

255 PSP witness Linda Styrk explains that transportation expense is applied to each invoice to cover the cost of the pilot's travel to the vessel requesting service, or to cover the cost of a pilot repositioning between the Port Angeles Pilot Station and Seattle. Styrk testifies that PSP requests a flat rate charge based on a three-month analysis of actual transportation costs incurred by pilots for travel between Seattle and the serviced ports (Transportation Study).[438]

256 PSP witness Burton testifies that the Transportation Study shows an average transportation reimbursement of $198.37 per trip. Burton argues that there are 18

---

[435] *Id.*

[436] vonBrandenfels, Exh. EVB-5X at 2 (PSP Bylaws, November 2018, § 2.2).

[437] Moore, Exh. MM-1Tr at 104:7:16.

[438] Styrk, Exh. LS-1T at 2:18-24, 3:1.

different destinations with charges ranging from $15 to $227.50 in the current tariff and contends that a single transportation charge requires less administrative burden and is simpler and easier for customers to understand.[439]

257 Staff witness LaRue contests the $156,809 restating adjustment for transportation expense because it does not comport to the definition of a restating adjustment, which provides that the adjustment must correct a recording error, account for an out-of-period expense, or effect a regulatory accounting adjustment.[440] LaRue further contests this adjustment because the three-month sample size of PSP's Transportation Study does not adequately represent a full year of expense. Accordingly, LaRue does not support adjusting an entire year of costs, arguing instead that an average transportation cost based on the historical record provides a fairer representation of the expenses anticipated during the rate year.[441]

258 Staff determined that transportation expenses from 2015-2019 averaged $255,457 annually but increased to $719,496 during the test year because of a change in operating practice. LaRue testifies that, prior to 2019, travel expenses were paid directly to the pilot who incurred the cost, but now PSP requires all travel-related revenues be paid directly to PSP. In turn, PSP reimburses individual pilots, which accounts for the significant increase.[442] Staff recommends the Commission reject PSP's restating adjustment in its entirety.[443]

259 PMSA witness Capt. Moore argues that assignments will decline during the rate effective period based on PSP's own vessel forecasting. PMSA thus objects to PSP's transportation expense adjustment which, in total, represent a nearly 50 percent increase in transportation expenses over test period amounts.[444]

260 In rebuttal testimony, Burton argues that PSP's financial statements included only a portion of the total cost of pilot transportation costs in Puget Sound because the transportation tariff charge was paid directly to the pilot rather than tracked on PSP's

---

[439] Burton, Exh. WTB-1T at 9:7-13.

[440] LaRue, Exh. AMCL-1Tr at 11:6-13.

[441] *Id.* at 11:14-18. LaRue proposes transportation expense adjustments in exhibit AMCL-4 for Commission review.

[442] *Id.* at 11:19-21, 12:5-10.

[443] *Id.* at 12:11-12.

[444] Moore, Exh. MM-1Tr at 111:1-5.

books.[445] Burton asserts that PSP is proposing to transition to reimbursing pilots for transportation expenses, rather than pilots directly receiving the tariff charge, to better allow Staff to audit the actual transportation expenses incurred.[446]

261 In its initial brief, PSP objects to Staff's proposal to remove the transportation expense adjustment because it will deny PSP the opportunity to recover a significant portion of operating expense in the rate year.

262 In its initial brief, PMSA opposes PSP's proposal to change the set fee-per-port transportation charge that has been in place for 55 years to an "across-the-board average" with "virtually no analysis or serious rationale."[447] PMSA recommends that no change to the transportation charge should occur until a full performance audit is completed. PMSA thus disagrees with Staff's recommendation to adopt PSP's proposed change and urges the Commission to maintain the current charging structure. PMSA further argues that the proposed change will likely result in greater administrative overhead and review, unfairly increase costs to vessels, and may run afoul of IRS reimbursement rules. Finally, PMSA highlights concerns with receipts produced in PSP's Transportation Study that suggest PSP may be engaged in undisclosed self-dealing because PSP pays transportation revenues to at least one pilot-owned transportation service provider.[448]

263 In its initial brief, Staff recommends the Commission reject PSP's $156,809 Transportation Study expense because PSP has not demonstrated that it is reasonable to calculate transportation costs for an entire year based on a three-month study.

264 In its reply brief, PSP argues that PMSA provided no evidence to support its claim that PSP's proposed transportation expense charge violates IRS rules.

265 Staff argues in its reply brief that accepting PSP's three-month Transportation Study as more reliable than historical test year records would result in an increase of almost 13 percent to transportation costs. Accordingly, Staff does not support reliance on the Transportation Study in the absence of additional analysis demonstrating that the three-month period is relative to the entire year.

---

[445] Burton, Exh. WTB-14T at 9:17-21.

[446] *Id.* at 9:3-14.

[447] PMSA Initial Brief ¶ 84.

[448] *Id.* at ¶ 32.

Commission Determination

266 We decline to adopt PSP's proposed adjustment to transportation expenses. We share Staff's concerns that the three-month Transportation Study fails to adequately represent PSP's historical transportation expenses and departs from PSP's past practice. We are also concerned that PSP remits reimbursements to transportation companies owned by member pilots.

267 As a threshold matter, we determine that PSP's proposed transportation adjustment is not actually a "restating" adjustment,[449] but is instead a "pro forma" adjustment. A restating adjustment generally corrects a recording error, accounts for an out-of-period expense, or makes a regulatory accounting adjustment.[450] As PSP now admits, PSP's transportation adjustment is actually a pro forma adjustment because it proposes to modify test period expenses.[451]

268 Specifically, PSP's transportation adjustment seeks to reimburse pilots for a broader range of expenses as they commute to an assignment. PSP's Transportation Study tracked actual transportation expenses,[452] which included the costs of pilots travelling from their homes,[453] and the costs of pilots using more expensive modes of transportation, such as local flights.[454] This is a change from PSP's longstanding practice. For decades, pilots have been reimbursed for any transportation costs based on the cost of taxi fare from PSP's Seattle office or the Port Angeles pilot station.[455]

269 We find little justification for this change in practice for transportation reimbursement. PSP's longstanding practice was not controversial.[456] Although PSP proposes a more generous system of reimbursement for pilot transportation expenses, PSP has not established that this is a prevalent industry practice or a reasonable expense for ratepayers

---

[449] *See* Burton, WTB-1Tr at 9:5-13.

[450] LaRue, Exh. AMCL-1Tr at 11:6-13. *See also* Burton, WTB-1Tr at 8:4-11.

[451] Norris, Exh. JN-6T at 5:9-11.

[452] Styrk, Exh. LS-1T at 3:13-16.

[453] *E.g.*, Burton, Exh. WTB-19X at 15-16 (invoices from Fife Maritime, Inc., showing transportation from "Home").

[454] *E.g.*, Burton, Exh. WTB-20X at 42 (invoices from PerryCook Flight Services, LLC).

[455] Styrk, Exh. LS-6X at 9 (PSP Response to PMSA Data Request 385). *See also* Burton, Exh. WTB-1Tr at 9:10-12, Burton, Exh. WTB-31X at 3 (PSP Response to PMSA Data Request 67).

[456] Styrk, TR 250:23-25.

to bear. It is unlikely that tracking and reimbursing pilots for their actual transportation expenses would be less time-consuming for PSP staff than administering the transportation charge under the current tariff.

270 Furthermore, the proposed adjustment would impose unreasonable added costs on shippers. PSP's adjustment would result in an increase of $156,809 in transportation expenses (approximately 13 percent) despite a projected decline in vessel traffic during the rate effective year.[457] As PMSA notes, shippers would be subsidizing pilots' decisions to live farther away from PSP's Seattle office.[458]

271 PSP's attempts to defend the accuracy of the three-month Transportation Study is unpersuasive. PSP explains that, under the current tariff, the transportation charge is paid directly to the pilot, who does the accounting of the actual transportation expense.[459] PSP argues that without a pro forma adjustment to transportation expenses "a significant portion of actual operating expense that will be incurred in the rate year will not be recovered."[460] But these arguments *assume* pilots should be reimbursed for the broader range of costs tracked by the Transportation Study. We find little justification for this assumption or its resulting change in practice.

272 Because we reject the Transportation Study as an unwarranted change in practice, we need not resolve other disputes among the parties related to transportation expenses. For example, Staff argues that a three-month study does not provide support for adjusting an entire year.[461] PSP witness Norris submits that this was a sufficient sample size for auditing purposes.[462] While it is not necessary to resolve this particular conflict, we note by way of guidance that the record is unclear regarding whether the Transportation Study overlooked seasonal variations in shipping traffic. To cite another example, PMSA witness Capt. Moore argues that the Transportation Study does not account for declining vessel assignments in the near future.[463] We agree with PSP that this assessment is

---

[457] Staff Reply Brief ¶ 42. *See also* Norris, JN-6T at 7:8:10.

[458] PMSA Corrected Initial Brief ¶ 29.

[459] Burton, Exh. WTB-14T at 9:8-11.

[460] PSP Initial Brief ¶126. *See also* Burton, Exh. WTB-14T at 9:17-21.

[461] *E.g.,* Staff Reply Brief ¶ 42; LaRue, Exh. AMCL-1Tr at 13:14-18.

[462] Norris, JN-6T at 6:12-18.

[463] Moore, Exh. MM-1Tr at 111:1-5.

incorrect because the proposed transportation expenses would be adjusted to account for projected vessel traffic,[464] but again, this issue is not material to our decision.

273 We accordingly reject PSP's proposed transportation expense adjustment and instead adopt Staff's adjustment, which is based on historical costs under the current tariff.[465] Staff appropriately includes the Transportation Expense Charge in its adjustment for the test year.[466]

274 Finally, we echo PMSA's concern that PSP pilots sometimes rely on pilot-owned businesses for transportation services. PSP does not dispute that a member pilot owns the Green Car Club, which provided transportation to pilots during the test period.[467] PSP denies any allegation that this amounts to a "double payment" for transportation expenses, and we agree.[468] But the focus on double payment misses the larger issue. The Commission requires other regulated companies to establish that affiliated interest agreements are reasonable and consistent with the public interest.[469] To the extent that PSP contracts with transportation companies owned by member pilots, PSP should establish that these contracts are reasonable and do not result in inflated transportation expenses. Accordingly, we expect proactive disclosure of such agreements in future rate case filings.

iii. Legal Expense

275 PSP includes a restating adjustment of $283,382 in general legal expenses, which includes attorney's fees incurred for PSP's legal representation in the June 2019 "065" BPC hearing.[470] It also seeks an adjustment of $784,645 for legal expenses related to preparation and execution of this rate case.

276 Staff witness LaRue contends that the $784,645 adjustment for legal expenses specifically related to the preparation and execution of this rate case are atypical, and she

---

464 *See* Burton, Exh. WTB-14T at 10:7-14.

465 LaRue, Exh. AMCL-2r2 at 1:29.

466 *Id.*

467 *Compare* PMSA Initial Brief ¶ 32 (alleging self-dealing with regards to the Green Car Club) *with* PSP Reply Brief ¶ 67 (denying the transaction amounted to a double-payment).

468 PSP Reply Brief ¶ 67.

469 RCW 81.16.020.

470 *See* Burton, Exh. WTB-1T at 9:15-17; Burton, Exh. WTB-3 (identifying restating and pro forma adjustments for attorney fees on line 12 of the "Pro Forma" tab).

attempts to normalize them through proposed adjustments. Staff proposes two changes to the legal expenses for this case.[471]

277 First, LaRue proposes allowing $283,382 in general legal expense for the test year because those expenses can be identified and are in line with previous years' expenses, resulting in a restating adjustment that reduces the per books legal expenses by $111,362.[472]

278 Second, Staff proposes amortizing half of the $785,645 rate case-related legal expenses over a three-year period as intermediate legal expenses, and the other half over a seven-year period as foundational legal expenses. LaRue argues that these expenses appear to be anomalous because they were incurred in the process of preparing for and litigating this rate case. LaRue provides two pro forma adjustments: $130,941 to reflect the three-year amortization period, and $56,118 to reflect the seven-year period.[473]

279 PMSA witness Capt. Moore testifies that PSP seeks to recover legal expenses from customers that are not representative of historic expenses, and that appeared to grow rapidly, rather than incrementally, prior to the rate case. Capt. Moore is concerned that, if these increases are adopted, they will serve as precedent in future general rate proceedings.[474] Capt. Moore argues that customers should not be required to reimburse attorney's fees to represent PSP at BPC meetings, which are also attended by PSP staff and officers, because these meetings focus on operational rather than legal issues.[475]

280 In cross-answering testimony, Capt. Moore agrees with Staff's recommendation to separate rate case-related legal expenses from legal expenses associated with PSP's regular operations, and agrees that rate case-related legal expenses should be amortized as Staff proposes.[476] Capt. Moore contends, however, that PSP should assume a portion of the rate case-related legal expenses to provide efficiency incentives, as well as to limit the legal expense incurred for PSP's regular operations. Capt. Moore does not recommend specific adjustment amounts.

---

[471] LaRue, Exh. AMCL-1Tr at 14:14-21.

[472] *Id.* at 15:4-11.

[473] *Id.* at 15:12-14, 16:1-2, 17:1-2, and 13-14.

[474] Moore, Exh. MM-1Tr at 112:18-24.

[475] *Id.* at 111:13-16, 113:1-9.

[476] Moore, Exh. MM-42T at 34:6-12.

281 In its initial brief, PMSA argues that the present non-Commission-related legal expenses are exorbitant, noting that the test period general legal expenses were 675 percent greater than historical average expenses. PMSA requests the Commission limit recovery of non-Commission related legal expenses to 50 percent of all charges that exceed those incurred in 2017, reducing the recoverable general legal expense to $189,420.

282 In its reply brief, PSP argues that PMSA's proposed adjustments to legal expenses should be rejected because they are untimely and inconsistent with the Commission's traditional ratemaking principles. Specifically, PSP alleges that the adjustment was proposed out of sequence and relies on cumulative expense information spanning multiple years rather than an historical test year.

Commission Determination

283 We accept Staff's restating and pro forma adjustments for legal expenses and the subsequent proposed amortization periods.

284 With respect to the $785,645 in legal expenses attributed to PSP's rate case, we agree with Staff's recommendation to amortize half of these expenses over a three-year period, and the remaining half over a seven-year period.[477] PSP does not dispute Staff's proposed amortization periods.[478] PMSA likewise agrees that Staff's proposed amortization is appropriate and within the Commission's authority.[479]

285 Although PMSA argues that PSP's rate case legal expenses are excessive, PMSA fails to support its argument with specific evidence.[480] As Staff witness LaRue observes, PSP's rate case legal expenses will provide an ongoing benefit to the organization for several years as it transitions to working with a new rate-setting authority.[481] Accordingly, we decline to disallow a portion of PSP's rate case legal expenses absent a showing that unreasonable or excessive expenses were incurred.

286 With regard to general legal expenses, we adopt Staff's proposal to allow $283,382 in legal fees during the test year, resulting in a restating adjustment that reduces the per

---

[477] *See* LaRue, Exh. AMCL-1Tr at 15:16-16:2.

[478] *See* PSP Initial Brief ¶ 125, Burton, Exh. WTB-14T at 11:14-18.

[479] PMSA Initial Brief ¶ 38.

[480] *Id.* at ¶ 39.

[481] LaRue, Exh. AMCL-1Tr at 15:18-19.

books legal expenses by $111,362.[482] PSP describes increasing legal fees since 2015 for numerous matters unrelated to its general rate case before the Commission.[483]

287 We note, however, that PSP's general legal fees have rapidly increased in recent years.[484] The Commission may limit recovery of excessive legal or expert witness fees when the evidence establishes that certain expenses are unreasonable or unnecessary.[485] Here, PMSA witness Capt. Moore observes that PSP increasingly relies on lawyers to represent the association during BPC meetings, sometimes responding to non-legal issues.[486] We share PMSA's concern that this practice may be unnecessarily increasing PSP's general legal fees and that the total amount of general legal fees is increasing from year-to-year. At this juncture, however, we have insufficient evidence regarding the nature of PSP's legal expenses or the matters its lawyers are pursuing.

iv. SILA Expense

288 PMSA witness Capt. Moore objects to the $150,000 adjustment for PSP's annual share of a previous self-insurance settlement charge, which was imposed on the BPC by the Legislature to cover costs associated with the settlement of a gender discrimination lawsuit. Capt. Moore argues that the self-insurance charges are being paid equally by pilots and customers, and that PSP's proposed adjustment conflicts with the underlying statute that directs how payments must be made. Capt. Moore argues that accepting the adjustment would result in customers unfairly paying twice: once through the legislatively imposed surcharge and again through higher tariff rates.[487]

289 In rebuttal testimony, Burton contends that the self-insurance settlement charge is a tax imposed by the Legislature on pilot tariff revenues to help fund the BPC's self-insurance premiums. Burton argues that this adjustment should be allowed because state taxes are

---

[482] *See* LaRue, Exh. AMCL-6 (Table 1).

[483] LaRue, Exh. AMCL-10 (PSP Response to Staff Data Request 41).

[484] *See* Moore, Exh. MM-1Tr at 111:10-113:10.

[485] *See Petition of Puget Sound Power and Light Company for an Order regarding the Accounting Treatment of Residential Exchange Benefits*, Docket UE-920433 (consolidated) Eleventh Supplemental Order (September 21, 1993) (disallowing costs of expert witness testimony that raised potential conflicts of interest).

[486] *Id.*

[487] Moore, Exh. MM-1Tr at 109:15-22, 110:4-7.

an expense of doing business, which the Commission traditionally treats as a reasonable operating expense.[488]

290 In its initial brief, PSP argues that SILA taxes should be included in the revenue requirement because they are a prudent expense that can and should be passed through and recovered by PSP in its revenue requirement.

291 PMSA takes issue with Staff's approval of this expense, arguing in its initial brief that it is "highly inappropriate for PSP to ultimately profit from the gender discrimination lawsuit by eliminating its liability to the detriment of ratepayers."[489] PMSA recommends the Commission continue self-insurance charges as originally split by the Legislature between pilots and customers.

292 Staff argues in its initial brief that the Legislature requires the BPC, not PSP, to pay $150,000 into the pilotage account, and that the BPC generally derives its revenue through the pilotage tariff. Accordingly, Staff recommends the Commission allow the $150,000 expense related to the BPC's self-insurance premium.

293 In its reply brief, PMSA argues that Staff misinterprets the Legislature's direction, which was intended to split the costs between PSP and its customers rather than require customers to bear the entire burden of the self-insurance costs. According to PMSA's interpretation, ratepayers pay their share through the vessel surcharge, and PSP pays its share through the specific $150,000 annual charge.

Commission Determination

294 We reject PSP's request to recover the $150,000 SILA expense through tariff rates paid by PSP's customers. The Legislature was clear that these funds should be paid by PSP, not its ratepayers.

295 In its 2019 Transportation Budget (Budget), the Legislature imposed two charges in PSP's tariffs to pay for the damages awarded to the plaintiff in a gender-discrimination lawsuit against the BPC. First, the Budget requires that the BPC deposit annually "the first one hundred fifty thousand dollars collected through Puget Sound pilotage district pilotage tariffs into the pilotage account."[490] Second, the Legislature assessed a $16 per

---

[488] Burton, Exh. WTB-14T at 10:15-19.

[489] PMSA Initial Brief ¶ 46.

[490] Laws of 2019, ch. 416, §108. *Accord* Moore, Exh. MM-52X at 5.

assignment self-insurance premium surcharge on vessels that require pilotage services in the Puget Sound pilotage district.[491]

296 PSP argues that the $150,000 SILA charge is an expense that should be "passed through" to ratepayers and recovered through tariff rates.[492] Staff agrees with PSP's position, arguing that the Legislature was concerned only with the "mechanism for the [BPC] to recover the expense, rather than assigning such expenses to be borne solely by PSP."[493]

297 The Budget language is not reasonably susceptible to Staff's and PSP's interpretation, and legislative history is instructive on this issue. When the Legislature appropriated funding for SILA, it simultaneously directed the BPC to freeze PSP's rates, thus preventing PSP from passing the financial responsibility for the $150,000 SILA expense on to ratepayers.[494] There is no evidence in the record to support a finding that the Legislature intended this responsibility to shift when the freeze was lifted.

298 We further observe that the Budget language requires the BPC to deposit "the first" $150,000 collected through PSP's tariffs each year into the pilotage account.[495] To give any effect to that phrase under PSP's interpretation, the BPC would be required to pay the cost upfront with PSP's first $150,000 in revenues, then recoup the $150,000 expense through higher rates paid over the remainder of the rate year to reimburse itself for the upfront cost. We reject this interpretation, instead reading the Budget's language to require that both pilots and vessels share responsibility for SILA funding, which gives full effect to the Budget's terms without including unnecessarily complicated and arbitrary accounting requirements.

299 The parties' interpretation is further undermined by the Legislature's decision to assess a separate, per vessel surcharge to reflect a ratepayer contribution to the BPC's self-insurance fund. If the Legislature intended the full amount to be recovered from ratepayers, the vessel assignment surcharge would conceivably incorporate the $150,000 expense.

---

[491] *Id.*

[492] PSP Initial Brief ¶ 138.

[493] Staff Initial Brief ¶ 62.

[494] Laws of 2017, ch. 313, § 108(2). *See also* Styrk, Exh. LS-1T 4:1-13; Moore, Exh. MM-1Tr 109:14-110:15; Moore, Exh. MM-42T (BPC Meeting Minutes September 21, 2017).

[495] Laws of 2019, ch. 416, § 108. *Accord* Exh. MM-52X at 5.

v. Consulting Fees Expense

300 Staff contests the adjustment for consulting fee expenses included in the test year, and PSP's proposed amortization schedule for consulting fees incurred prior to the test year.[496]

301 Staff witness LaRue argues that $47,900 of the $142,229 test year consulting fees were incurred to conduct a fatigue management study, and $47,748 were incurred in connection with this general rate proceeding. Staff proposes removing these expenses from the test period and amortizing them separately, employing the same approach Staff applied to legal expenses. [497] LaRue's restating adjustment removes these two costs, totaling $95,648, from the test year. LaRue further asserts that the consulting fee expenses incurred after the test year in the amount of $139,926 are atypical, and thus proposes treating half as intermediate and half as foundational. Accordingly, LaRue proposes amortizing a $39,263 portion of the expense over three years and amortizing a $16,827 portion of the expense over seven years. [498]

302 In cross-answering testimony, PMSA witness Capt. Moore disputes 12 payments made to a consultant who may be related to PSP's executive director, and three payments that were apparently made to a licensed pilot. PMSA argues that these expenses are questionable and raise potential ethical concerns.[499] Capt. Moore asserts that Staff should have the ability to properly audit PSP's expenses to determine whether the consulting expenses were appropriate.[500]

Commission Determination

303 We agree with Staff's proposed adjustments to consulting fees. While PSP proposes amortizing consulting fees over a two-year period, Staff separates out consulting fees attributable to PSP's general rate case from the test period.[501] Staff then proposes to amortize these rate case consulting fees over three- and seven-year periods.[502] These

---

[496] LaRue, Exh. AMCL-1Tr at 18:5-15.

[497] *Id.* at 18:18-22, 19:14-21.

[498] *Id.* at 19:1-6, 20:21-22, 21:4

[499] Moore, Exh. MM-42T at 35:25-26, 26:1-4.

[500] *Id.* at 36:8-24.

[501] LaRue, Exh. AMCL-1Tr at 19:1-6.

[502] *Id.*

adjustments normalize atypical expenses and recognize the foundational work required to litigate PSP's first rate case before the Commission. Staff witness LaRue also credibly testified that amortizing a portion of rate case consulting fees over a seven-year period would result in a lower impact on rates.[503]

304 Although PSP briefly suggests that a five-year amortization period may be appropriate, it fails to support its argument with any relevant authority or citations to evidence in the record.[504]

305 We reject PMSA's argument that consulting fees are not necessary to the provision of pilotage services[505] Regulated companies are generally allowed to recover the costs of legal fees and consulting fees from ratepayers absent any evidence of specific, unreasonable practices.[506]

vi. Depreciation Expense

306 PSP witness Burton contends that the regulatory lives of PSP's pilot boats and the capitalized repairs incurred in previous years are captured in the depreciation expense adjustment, which reflects a change from a 10-year depreciation life for income tax purposes to a 20-year life for regulatory depreciation purposes, as described in 46 C.F.R. § 382.3(b)(2)(i). Burton asserts that this change in the depreciable life of the pilot boats accounts for $342,650 of the $442,879 adjustment represented in the depreciation schedule.[507]

307 Staff witness LaRue disagrees with the depreciation schedule of one of two pilot boats and two rebuilt pilot boat engines, and asserts that 9 of the 29 assets included in PSP's depreciation adjustments were fully depreciated in 2018 and 2019.[508] Additionally, LaRue argues that PSP intends to replace the pilot boat *Juan de Fuca* in four years. As

---

[503] LaRue, TR 610:10:18.

[504] *See* PSP Initial Brief ¶ 135.

[505] *See* Moore, Exh. MM-1Tr at 101:4-7.

[506] *See, e.g., Petition of Puget Sound Power and Light Company for an Order regarding the Accounting Treatment of Residential Exchange Benefits*, Docket UE-920433 (consolidated) Eleventh Supplemental Order (September 21, 1993) (disallowing costs of expert witness testimony that raised potential conflicts of interest).

[507] Burton, Exh. WTB-1T at 8:20-25.

[508] LaRue, Exh. AMCL-1Tr at 9:1-16.

such, Staff proposes to depreciate the "remaining life" value of $322,034 for this vessel over a four-year period.[509]

308 In rebuttal testimony, witness Burton argues that Staff's treatment of the depreciation expense is inconsistently applied to each of the pilot boats, *Puget Sound* and *Juan de Fuca*, and asserts that LaRue's testimony assumes each vessel has been fully depreciated for 20 and 18 years, respectively.[510] Burton disagrees with this assessment, and argues that the undepreciated balances of the *Puget Sound* and *Juan de Fuca* are $90,816 and $402,543, respectively.[511] Burton asserts that the Commission should accept PSP's original calculation of $342,650 for depreciation expense for the pilot boats.[512]

309 In its initial brief, PSP expresses concerns about Staff's adjustment and specifically disputes Staff's (1) removal of any depreciation for the vessel in the test period and (2) failure to give effect to the final six months of the 20-year vessel depreciation life on the basis of Staff's conclusion that the vessel has no depreciable value in the test year. According to PSP, extending the amortization period for the *Juan de Fuca* and failing to allow depreciation expense for six months of 2019 for the *Puget Sound* results in a reduction of $252,889 in depreciation expense. If the Commission adopts Staff's recommendations, PSP requests reconsideration of Staff's proposal to lengthen the amortization of foundational legal and accounting fees. If the Commission adopts Staff's recommendation related to depreciation expense, PSP argues that the Commission should adopt a five-year amortization period for legal and consulting costs for the sake of consistency.

310 Staff maintains in its initial brief that the useful life approach is appropriate "because it ensures that depreciation costs are evenly recovered over the entire period an asset is used and in service."[513] Staff contends that this approach prevents intergenerational inequity by reducing the likelihood that future ratepayers will be required to pay for assets from which they never received service, or avoid paying a share of depreciation while the asset is still in service because it was fully depreciated by previous ratepayers.

---

[509] *Id.* at 10:5-9. *See also* LaRue, Exh. AMCL-2r, which details Staff's proposed depreciation schedule.

[510] Burton, Exh. WTB-14T at 15:11-19.

[511] *Id.* at 15:15-16. 22-23.

[512] *Id.* at 16:14-16.

[513] Staff Initial Brief ¶ 52.

Commission Determination

311 We agree with Staff's proposed adjustment to PSP's depreciation expenses.[514] The dispute between PSP and Staff focuses on the two pilot vessels owned by PSP: the *Puget Sound* and the *Juan de Fuca*.

312 As an initial matter, PSP points to a federal regulation, 46 C.F.R. § 382.3, as providing a 20-year depreciable life for these pilotage vessels.[515] The U.S. Department of Transportation Maritime Administration (MARAD) generally depreciates vessels over a 20-year period using the straight-line method when determining rates for preference cargo on U.S. flagged vessels.[516] As Staff notes, this regulation is not concerned with the vessels used by pilots to reach their assignments, or with pilotage rate setting.[517] This subpart of the federal regulations is concerned only with the submission requirements for proceedings before MARAD,[518] not rates for marine pilotage, pilotage vessels, or proceedings before state utility commissions.

313 Even if 46 C.F.R. § 382.3 applied, it would not necessarily require a 20-year depreciation schedule as PSP suggests. When vessels older than 10 years are reconstructed, the regulation provides for discretion in determining the depreciation schedule.[519] Both the *Puget Sound* and the *Juan de Fuca* are about 20 years old, and each has its engine rebuilt approximately every four years.[520] The regulation allows for discretion in determining an asset's remaining useful life under these circumstances.

314 The essential question related to the first pilot vessel at issue, the *Puget Sound*, is whether PSP has been able to fully recognize the cost of the vessel over its useful life. Although PSP proposes to continue recognizing the depreciation of the *Puget Sound* during the test year,[521] PSP has had an opportunity to fully recognize the cost of the vessel through tariff rates in effect through the end of 2019, under PSP's own preferred method of depreciation accounting. As PSP witness Burton explains, PSP has recognized 19 years

---

[514] *See* LaRue, Exh. AMCL-3 at 1:1:8 (Table 1).

[515] *E.g.*, PSP Initial Brief ¶ 133.

[516] 46 C.F.R. § 382.3(b)(2)(i).

[517] *See* Staff Initial Brief ¶ 54.

[518] 46 CFR § 382.1 (describing the scope of the subpart).

[519] 46 C.F.R. § 382.3(b)(2)(i).

[520] LaRue, Exh. AMCL-1Tr at 9:21-10:2.

[521] Burton, WTB-14T at 12:12-19.

and six months of depreciation for the *Puget Sound* by June 2019, the end of the test year, under PSP's proposed 20-year depreciation schedule for these vessels.[522] The 20-year depreciation schedule would therefore end in December 2019. But not all "per books" expenses occurring during the test year should be included in the modified historical test year for the purposes of determining PSP's revenue requirement.

315 Including the *Puget Sound* depreciation expenses in the test year revenue requirement would allow PSP to recover the final year of depreciation expenses during the rate effective year beginning in December 2020. Such recovery would violate the matching principle because PSP would receive revenue for the *Puget Sound's* depreciation expenses after the vessel is fully depreciated in December 2019. It would also be unjust to ratepayers. There is no evidence that PSP has under-recovered its depreciation expenses for the *Puget Sound* and that it should continue to recover these expenses through rates after December 2020. We therefore agree with Staff that the *Puget Sound* will be fully depreciated by the rate effective year and therefore should be removed from the test period depreciation expense.[523]

316 PSP next challenges Staff's proposed adjustment to the depreciation schedule for the *Juan de Fuca*. First, PSP generally challenges Staff's use of a "remaining life theory" of depreciation, arguing that such theory is unsupported by any authority.[524] The methods used to calculate depreciation vary, and the Commission exercises its discretion on this issue according to the facts of each case. As a general matter, depreciation "is a process of charging the cost of depreciable property, adjusted for net salvage, to operating expense accounts over the useful life of the asset."[525] Because projections of an asset's useful life may not always be accurate, the Commission has relied on the concept of "remaining life" to allow for mid-course corrections in depreciation schedules to ensure the entire value of the asset is recovered.[526] The Commission takes a "forward looking" approach to adjust depreciation schedules when the asset's useful life is shortened by

---

[522] *Id. See also id.* at 15:20-22.

[523] *See* Staff Reply Brief ¶ 44.

[524] PSP Initial Brief ¶ 133.

[525] *In the Matter of the Petition of US West Communications, Inc., for Depreciation Accounting Changes*, Docket No. UT-940641 Fourth Supplemental Order (May 26, 1995) (citing *Louisiana Public Service Com. v. FCC*, 476 U.S. 355, 364-65 (1986).

[526] *E.g., id.*

changes in the law, technological advancements, or competition in the market.[527] Staff's testimony is consistent with these principles.

317 PSP and Staff also disagree about the appropriate length of the *Juan de Fuca*'s depreciation schedule. PSP proposes approximately two more years of depreciable life for the *Juan de Fuca*, following the MARAD regulation described above.[528] LaRue testifies that PSP intends to replace the *Juan de Fuca* in about four years, leading her to propose a remaining life of four years.[529] PSP witness Burton argues, however, that PSP directors have not made a decision as to when to replace the vessel, and that this decision depends on a number of factors.[530] Though we recognize that PSP may change its decision based on various factors, PSP's statement to Staff that it intends to replace this vessel in approximately four years is persuasive. While this results in a slightly longer depreciation schedule, PSP is still provided with a full opportunity to recognize the expense of this vessel and recover it in rates.

318 We disagree with PSP's argument that Staff applies different methods to the depreciation of the two pilot vessels.[531] As LaRue testified, she understood that PSP intended to replace both vessels in about four years. Because the *Puget Sound* would be fully depreciated by 2019, she proposed removing it from rates. When one asset is fully depreciated but the other is not, it is reasonable to treat the assets differently so that PSP is afforded a sufficient opportunity to recover the costs of its investments.

319 There is little evidence in the record disputing Staff's proposal to remove other, less costly assets from the depreciation schedule. Setting aside the *Puget Sound*, Staff proposes to remove eight assets from the depreciation schedule.[532] We agree with Staff that these eight assets were fully depreciated by the rate year.[533] PSP does not offer any rebuttal to Staff's testimony with respect to these eight assets. Accordingly, we adopt Staff's proposed adjustments.

---

[527] *In the Matter of the Petition for GTE Northwest Incorporated for Depreciation Accounting Changes*, Docket No. UT-961632 Fourth Supplemental Order (December 12, 1997).

[528] Burton, WTB-14T at 13:22-23.

[529] LaRue, AMCL-1Tr at 9:12-10:2.

[530] Burton, WTB-14T at 15:1-7.

[531] *See* PSP Reply Brief ¶ 64.

[532] LaRue, Exh. AMCL-3 at 1:11-24 (Table 2).

[533] LaRue, Exh. AMCL-1Tr at 9:2-3.

vii. Entertainment and Travel Expense

320 Staff witness LaRue agrees with the removal of charitable contributions, sponsorship, and scholarships from entertainment and travel expenses, but contests PSP's $4,324 expense for "promo-swag" used to purchase "uniforms" for certain PSP employees. Staff notes that it observed few if any "uniforms" during numerous in-person interactions with PSP and its employees. Further, LaRue argues that "swag" is historically not recognized as a ratepayer responsibility. Staff therefore recommends a restating adjustment of $36,319 to remove this unallowable expense in addition to the items already removed by PSP witness Burton.[534]

321 PMSA witness Capt. Moore disagrees with Staff's recommended adjustment of $66,154 for entertainment and travel, questioning whether most of the expenses are necessary for the delivery of pilotage services in Puget Sound.[535] Capt. Moore provides examples of expenses that PMSA believes are not appropriate for recovery in rates, including PSP-sponsored golf tournaments, gifts, contributions to other organizations' fundraising efforts, and a PSP Christmas party.[536] Capt. Moore provides no specific adjustment amount for entertainment and travel.

Commission Determination

322 PSP witness Burton appropriately excludes charitable contributions, sponsorships, and scholarships from expenses.[537] We agree with Staff's proposal to remove an additional $4,324 for uniforms from entertainment and travel expenses. As Staff testifies, PSP recorded these uniform expenses as an entertainment and travel expense with the description of "promo-swag" in the worksheets. [538] LaRue testified that Staff observed "few, if any, 'uniforms'" during its interactions with PSP employees.[539] When uniform apparel is rarely worn and described as "swag," it is appropriately understood as a

---

[534] *Id.* at 13:4-21.

[535] Moore, Exh. MM-42T at 37:8-11, 19-21.

[536] *Id.* at 37: 16-19.

[537] Burton, Exh. WTB-1Tr at 8:8-11.

[538] LaRue, Exh. AMCL-1Tr at 13:12-19.

[539] *Id.*

promotional or marketing expense that cannot be recovered in rates.[540] We agree with PMSA that such expenses are not necessary to the provision of pilotage services.[541]

viii. Leasing Expense

323 PMSA witness Capt. Moore disputes PSP's test year leasing expense of $339,108 for office equipment in rate years one, two, and three, arguing that PSP's auditor report, provided by PSP witness Norris,[542] details reductions on required lease payments. Capt. Moore recommends reviewing these expenses to avoid including costs that unnecessarily inflate rates.[543]

Commission Determination

324 We accept PSP's test year expense of $339,108 for office equipment leases. Although PMSA objected to this expense in its cross-answering testimony,[544] PMSA has not established that this expense is inaccurate or unreasonable.

325 PMSA argues that Norris lists a lower amount for these expenses.[545] In her Independent Auditor's Report for the years ended December 31, 2017, and 2018, Norris provided a "schedule of future minimum lease payments for non-cancelable operating leases with a term greater than one year as of December 31, 2018."[546] From 2019 to 2021, these minimum lease payments totaled $903,364.[547] PMSA has not proffered discovery responses or other evidence establishing that Norris was concerned with the same leases at issue in Burton's proposed adjustment for office equipment leasing expenses. Similarly, PMSA has not established that Norris's schedule of "minimum" payments undermines Burton's proposed adjustment. We therefore accept PSP's test year office equipment leasing expenses.

---

540 *See, e.g., WUTC v. Avista Corp.*, Dockets UE-991606, UG-991607 (consolidated) Third Suppl. Order ¶ 218 (September 29, 2000) (excluding expenses for promotional bill inserts from rates).

541 *See* Moore, Exh. MM-1Tr at 101:3-5.

542 *See* Norris, Exh. JN-4.

543 Moore, Exh. MM-42T at 38:6-17.

544 *Id.* at 38:6-17.

545 *See id.*

546 Norris, Exh. JN-04 at 17.

547 *Id.*

ix. Miscellaneous Operating Expenses

326 PMSA witness Capt. Moore disputes that many of PSP's reported operating expenses are essential for providing pilotage services, and argues that customers should not be required to pay for the following "non-essential expenses": lobbying, political contributions, dues, license fees, conferences, entertainment, consulting, or marketing.[548] PMSA requests these expenses be excluded from the revenue requirement.

327 On rebuttal, PSP witness Burton refutes Capt. Moore's proposed expense categories. Burton contends that Capt. Moore characterizes "essential" expenses as only those components of "vessel service" that are shared by all pilots, asserting that the Commission typically authorizes public service companies to recover reasonable operating expenses.[549]

328 In its initial brief, PSP argues that its operating expenses are reasonable and ordinary expenses for a regulated public service company. PSP further argues that if the Commission treats operating expenses as income rather than benefits it will distort the revenue requirement when there are fewer licensed pilots than funded pilots.

Commission Determination

329 We address PSP's proposed adjustments for consulting and entertainment fees in Sections II.C.6.v and II.C.6.vii of this Order, respectively. With respect to the remaining contested adjustments, PSP removed expense items not allowed in regulatory accounting such as political lobbying, dues, and advertising costs.[550] Capt. Moore's testimony fails to acknowledge that these expenses were removed through restating adjustments made in PSP's initial filing. As such, those expenses are not at issue in this proceeding.

330 We accept PSP's inclusion of license fees and conferences in its revenue requirement. Pilot licensing fees are a reasonable expense incurred to provide pilotage service and are thus recoverable in rates. Industry conferences, which often provide training and development opportunities, are considered a reasonable expense in the absence of evidence that those conferences were unrelated to the provision of pilotage services. PMSA offered no such evidence. In the future, PMSA is encouraged to make detailed

---

[548] Moore, Exh. MM-1Tr at 100:24-26, 101:2-5.

[549] Burton, Exh. WTB-14T at 5:1-4.

[550] *Id.* at 8:6-11.

arguments, like those Staff makes in its testimony, explaining why a particular expense should or should not be included in the revenue requirement.

D. RATE DESIGN

331 PSP contends that its proposed changes to the existing tariff structure will make charges more transparent and will simplify the tariff's design.[551] PSP further asserts that it proposes a three-year rate plan to avoid rate shock that would likely otherwise occur. Staff contends that its proposed revenue requirement model does not require a multi-year rate plan and proposes a similar rate design with different line item charges. PYM argues that existing tariff rates negatively impact large recreational vessels that require compulsory pilotage services and requests a separate tariff rate for foreign flagged recreational vessels, but does not propose a specific rate.[552] PMSA argues that the existing tariff is just, fair, reasonable, and sufficient, and that both PSP's proposed changes and Staff's proposed changes would result in rate shock. PMSA further argues that, if adopted, Staff's proposal should be implemented incrementally over a multi-year rate plan.

332 PSP witness Capt. Moreno argues that the existing tariff structure is difficult to understand because rates are calculated based on vessel length and volume and transit length of the assignment, plus accessory charges for a number of factors, which results in disproportionate charges for larger vessels. While the proposed tariff is structured similarly, Capt. Moreno contends that the rates are divided into categories that are more proportional to vessel length, which increases transparency and ease of understanding.[553]

333 PSP witnesses Capt. Moreno and Burton propose the following rates for Inter-Harbor Vessel Movements for rate years 1, 2, and 3, as shown in the table below.

[551] Moreno, Exh. SM-1T at 7:16-18.

[552] Webber, Exh. MW-1T at 1:20-25, 2:1-3.

[553] Moreno, Exh. SM-1T at 8:1-9:2.

Table 2: Inter-Harbor Vessel Movement Rate Spread by Rate Year.[554]

Tonnage Charge	Current Rate	Proposed Rate Year 1	Proposed Rate Year 2	Proposed Rate Year 3
Gross Tonnage up to and including 20,000 tons:	$0.0084 per gross ton, plus	$1,625.00 Flat rate, plus	$1,771.25 Flat rate, plus	$1,815.53 Flat rate, plus
Gross Tonnage over 20,000 up to and including 50,000 tons	$0.0814 per gross ton, plus	$.0756 per ton, plus	$.0824 per ton, plus	$.0845 per ton, plus
Gross Tonnage over 50,000 up to and including 100,000 tons:	$0.0974 per gross ton	$.0706 per ton, plus	$.0770 per ton, plus	$.0789 per ton, plus
Gross tonnage over 100,000 tons:	N/A	$.0661 per ton	$.0720 per ton	$.0738 per ton

334 PSP witnesses Capt. Moreno and Burton propose the following rates for Harbor Shift Vessel Movements for rate years one, two, and three, as shown in the following table.

Table 3: Harbor Shift Vessel Movement Rate Spread by Rate Year.[555]

Harbor Shift Charge	Proposed Rate Year 1	Proposed Rate Year 2	Proposed Rate Year 3
Vessels less than 231.65 meters Length Overall	$1625.00	$1771.25	$1815.53
Vessels 231.65 meters Length Overall and larger	$1825.00	$1771.25	$2038.98

[554] *See id.* at 22:14-18; *See also* Burton, Exh. WTB-09, and Burton, Exh. WTB-10.

[555] Moreno, Exh. SM-1T at 23:4-6; Burton, Exh. WTB-9; Burton, Exh. WTB-10.

335 PSP proposes an hourly Service Time charge of $326.80 for year one,[556] $354.90 for year two,[557] and $364.10 for year three, which would apply to both the Inter-Harbor Vessel Movements and the Harbor Shift Vessel Movements.[558]

336 PSP also includes the proposed additional rates for all three rate years:

- Pilot Boat Charge ($348 in all three rate years)
- Transportation Charge ($198.37 in all three rate years)
- Cancellation Charge ($1,625 in year 1, $1,771.25 in year 2, and $1815.53 in year 3)
- Delay, Detention, and Standby Charges ($326.80 per hour in year one, $354.90 per hour in year two, and $364.10 per hour in year 3)
- Carried out of District Charge ($2,107 in all three rate years)
- Dead Shift Charge (double the applicable tonnage or harbor shift rate per pilot in all three rate years)
- Charges for Additional Service ($326.80 per hour in year 1, and $354.90 in years 2 and 3)
- BPC Training Surcharge ($16 per vessel movement for all three rate years), and
- Finance Charges (1.5 percent for payments made after 30 days in all three rate years).[559]

337 Staff witness Sevall argues that if the Commission accepts Staff's proposed revenue requirement a rate plan is unnecessary due to an absence of rate shock.[560]

338 Staff agrees with the tonnage charge and service time charge concept but disagrees with PSP's proposed rates. Sevall argues that customer familiarity with the format of the

---

[556] Burton, Exh. WTB-8.

[557] Burton, Exh. WTB-9.

[558] Burton, Exh. WTB-10.

[559] *See* Burton, Exh. WTB-8; Burton, Exh. WTB-9; and Burton, Exh. WTB-10.

[560] Sevall, Exh. SS-1T at 18:2-8.

current tariff is not a sufficient reason to continue using the current tariff design because the tariff has many variables that make it difficult to calculate a total rate.[561]

339 Staff instead proposes two primary rates: A Gross Tonnage rate that operates much like base rate, and a Service Time rate that functions like a usage rate in utility tariffs. Staff also includes other line items for specific charges similar to PSP's proposed tariff.[562] Sevall explains that the Gross Tonnage rate and the specific line item rates were designed to cover the cost associated with PSP's income statement, and that the Service Time charge was calculated to cover the TDNI proposed in Staff's revenue requirement formula.[563] Sevall argues that Staff's proposed rates also address risk because the large vessels that pose more risk will pay more through the Gross Tonnage charge, and longer assignments will be compensated for risk through the Service Time charge.[564]

340 Staff proposes rates as shown in Table 4, below.

Table 4: Staff Proposed Pilotage Tariff Rates.[565]

Service	Rate
Item 300 Intra-Harbor Vessel Movements	
Gross Tonnage up to and including 20K tons	$502.50 flat rate, plus
Gross Tonnage over 20K tons up to and including 50K tons	$0.0450 plus
Gross Tonnage over 50K tons up to and including 100K tons	$0.0350 plus
Gross Tonnage over 100K tons	$0.0250 plus
Service time Charge	$546.05 per hour
Item 310 Harbor Shift Vessel Movements	
Vessels less than 231.65 meters length	$502.50
Vessels 231.65 meters length and over	$702.50
Service Time Charge	$546.05 per hour

---

[561] *Id.* at 19:5-11.

[562] *Id.* at 19:14-16.

[563] *Id.* at 20:20-21; 21:1-2.

[564] *Id.* at 20:7-10.

[565] Sevall, Exh. SS-3 at 1.

Item 330	
Pilot Boat Charge	$348.00 per use
Item 340	
Transportation Charge	$168.20 per pilot per assignment
Item 350	
Cancelation Charge	$502.50
Item 360	
Delay, Detention, Standby, Other Delay	$546.05 per hour
Item 370	
Carried out of District	$2,000.00 per instance
Additional Services	$546.05 per hour
Item 380	
Training Surcharge	$19.00 each trainee per movement
SILA Surcharge	$16.00 per movement
Item 390	
Finance Charge	1.5% if payment after 30 days.

341 PMSA witness Capt. Moore recommends the Commission reject PSP's proposed tariff because PSP has failed to meet the burden of proving that the current tariff rates are not fair, just, reasonable, and sufficient.[566] Capt. Moore argues that the Commission should only approve two tariff increases: one for the Commission's ratemaking costs consistent with Staff's recommendation, and one for the BPC Training Surcharge and Training Stipend. According to Capt. Moore, the BPC surcharge rate should be increased from $15 to $19, consistent with PSP's request and as authorized by the BPC.[567]

342 PYM witness Monique Webber contends that the pilotage rules and rates have a negative impact on the economics of the recreation maritime industry in Washington. PYM requests a separate tariff and rates for recreational vessels subject to compulsory pilotage services.[568] PYM does not propose a specific tariff or rates in its testimony or exhibits.

343 In rebuttal testimony, PSP witness Capt. Moreno largely agrees with the overall structure of Staff's proposed tariff. PSP disagrees, however, with the specific rates Staff proposes and the policy shift that Staff is attempting to effectuate through its recommended rate

---

[566] Moore, Exh. MM-1Tr at 139:7-10.

[567] *Id.* at 142:17-22; 143:2-4.

[568] Webber, Exh. MW-1T at 2:1-4; 6:4-5.

design.[569] PSP argues that Staff's proposal to recover PSP's operating expenses and administrative overhead through the Gross Tonnage rates and to recover TDNI through the Service Time charge raises concerns because the Service Time charge will always generate more revenue than the Gross Tonnage charge. According to PSP, this "conflicts with the traditional principles of pilotage rate design that charges should reflect the relative risks posed by the size of and skillset required to pilot the vessel, and its revenue generating capacity."[570] Capt. Moreno also argues that Staff's proposed rate design will result in smaller vessels paying disproportionately higher rates than large vessels because smaller vessels do not have the same advantages as larger vessels related to economies of scale.[571]

344 Capt. Moreno contends that the Service Time charge does not address risk as Staff intended, and that vessel size is by far the greatest risk factor because larger vessels are harder to handle and require more technically complex skillsets, as recognized by the BPC requirement for new pilots to take upgrade trips on increasingly larger vessels. In addition, Capt. Moreno argues that larger vessels present a greater risk of harm because they carry more fuel, have larger mass with more potential kinetic energy, and, in the case of tankers, carry petroleum products that could spill in the event of an accident.[572]

345 Capt. Moreno disagrees with Capt. Moore's argument that pilots have not been exposed to greater risks with increasing vessel sizes and argues that this assessment focuses primarily on the number of incidents. Capt. Moreno acknowledges that the number of incidents might serve as an indicator of certain risks but contends that a lack of incidents overall does not indicate an absence of risk. Instead, Capt. Moreno argues, it shows that PSP is appropriately managing risks and keeping the number of incidents acceptably low.[573] Capt. Moreno also contends that the largest container ships that pilots operate far exceed the size of the ships for which Puget Sound's waterways were originally designed, such as the Blair Waterway in Tacoma, which poses a greater risk to larger vessels due to their "greater stopping distance, reduced steering efficiency, and increased turning radius."[574]

---

[569] Moore, Exh. SM-2T at 1:19-22.

[570] Moreno, Exh. SM-2T at 2:16-18.

[571] *Id.* at 2:18-22, 10:3-22.

[572] *Id.* at 3:5-18.

[573] *Id.* at 5:17-21.

[574] *Id.* at 6:3-21.

346 Capt. Moreno contends that Staff's proposal would result in rate shock because it would result in smaller ships paying much higher rates than they do under the current tariff structure. Capt. Moreno provides examples of this impact in the following table.[575]

Table 5: Comparison of Staff's and PSP's Rate Proposals with Current Rates.[576]

Vessel	G/T	Type	Current Tariff	Staff Rate Design*	PSP Proposed Tariff*
Pioneer	499	YACHT	$2,609	$8,725	$5,766
Sea Owl	1494	YACHT	$2,210	$6,624	$4,786
ATB Dublin	14935	ATB	$1,906	$4,522	$3,805
Global Round (Global Gold)	21158	BULK (S)	$2,021	$,5976	$4,547
Balao (Cap Pasado)	26412	CONT (S)	$2,294	$5,516	$4,620
Overseas Los Angeles	29242	TANK (M)	$2,692	$5,646	$4,831
Stability (Fortune Iris)	43022	BULK (L)	$4,272	$7,678	$6,526
Peak Pegasus (Brenda)	43005	BULK	$4,721	$7,063	$6,198
Prestige Ace (Triumph Ace)	55875	CAR	$5,603	$8,207	$7,562
Midnight Sun	65314	RO/RO	$3,821	$5,947	$5,329
Mol Partner (Brighton)	71837	CONT (M)	$7,339	$8,076	$8,269
TYSLA	75251	RO/RO (L)	$7,862	$7,498	$8,183
Polar Resolution (Polar Discovery)	85387	TAN (L)	$8,107	$8,560	$9,225
Carnival Legend	85942	PASS (M)	$8,037	$7,879	$8,938
MSC Silvia	94469	CONT (M)	$8,932	$8,187	$9,540
New York Express	142295	ULCV	$14,259	$9,273	$12,726
Norwegian Bliss	168028	ULPV	$16,393	$9,436	$14,100

* Does not include BPC Training and BPC SILA surcharge

347 Capt. Moreno testifies that PSP attempted to maintain the revenue split under the current tariff between Gross Tonnage charge and Length Overall (LOA/Distance) charge in its proposal to ensure rate stability. Capt. Moreno asserts that the Gross Tonnage charge currently produces about 60 percent of the total revenue, and the LOA/Distance charge

[575] *See also* Moreno, Exh. SM-4.

[576] Moreno, Exh. SM-2T at 12:18-24, 13:1-11.

produces about 27 percent of overall revenue. Capt. Moreno observes, however, that PSP replaces the LOA/Distance charge with the Service Time charge in this filing, producing about 29 percent of overall revenue.[577] Capt. Moreno asserts Staff's proposal will result in the Service Time charge producing about 57 percent of overall revenue, resulting in a less reliable and less stable revenue stream due to unanticipated vessel delays that will affect the predictability of the Service Time revenue stream.[578] Capt. Moreno argues that Gross Tonnage revenue will decrease by 46.5 percent under Staff's proposal, and that Service Time revenue would increase by 197 percent compared to the revenue currently attributed to the LOA/Distance charge.[579]

348 In cross-answering testimony, Staff witness Sevall argues that PYM witness Webber provides no specific rate proposal for a recreational vessel tariff, nor reasons why such a specific recreational rate would be fair, just, reasonable, and sufficient. Further, Sevall testifies that the BPC already has a process in place for exempting recreational vessels from compulsory pilotage services, providing such vessels rate relief. Thus, Staff does not believe an additional process for rate relief is justified.[580]

349 Sevall also addresses the recent trend, identified by Capt. Moore, of increasing revenue and decreasing vessel assignments under the current tariff. Sevall asserts that this trend is due to the increasing size of vessels, which, under the current tariff, generate more revenue because of the higher rates charged for higher tonnage. Thus, Sevall contends, revenue per assignment can increase even when overall vessel assignments are decreasing and tariff rates are held constant.[581]

350 Sevall contends that Staff's proposed rate design is not susceptible to a similar trend because it uses the Service Time charge, which functions like a usage rate, along with the use of a declining rate structure in lieu of the current tariff's inclining tonnage rate.[582] Sevall recommends that the Commission adopt PSP's proposed tariff format and Staff's proposed rate design.[583]

---

[577] *Id.* at 15:2-6.

[578] *Id.* at 15:7-14.

[579] *Id.* at 15:17-24.

[580] Sevall, Exh. SS-6T at 7:6-10.

[581] *Id.* at 7:20-21, 8:14-20, 9:1-2.

[582] *Id.* at 9:6-18.

[583] *Id.* at 10:12-14.

351 PMSA witness Capt. Moore asserts that Staff is proposing a completely new tariff format and rate design that, if adopted, will result in rate shock due to significant increases in rates for many vessels.[584] To illustrate this argument, Capt. Moore provides evidence demonstrating that Staff's proposal will result in rate increases ranging from 45 percent to 253 percent.[585]

352 In its initial brief, PSP argues that the Commission should reject Staff's proposal to derive approximately 60 percent of the revenue requirement from the Service Time charge, which applies equally to vessels regardless of size. The result, PSP contends, would be an inexplicably large rate decrease for the largest vessels and a rate increase of greater than 100 percent for many small vessels.

353 PMSA argues in its initial brief that pilot hourly rates should be revised to apply to actual bridge hours rather than rounded-up bridge hour, or, alternatively, require both upward and downward rounding. PMSA contends that rounding up time in all circumstances is unnecessary and unfair. If the Commission chooses to adopt a rounding convention, PMSA recommends the traditional rounding convention of rounding down 0.49 hours or less, and rounding up 0.5 hours or more, which, PMSA claims, has a smoothing effect over time. PMSA also contends that this convention is fairer because it benefits both ratepayers and pilots rather than pilots only.

354 Staff argues in its initial brief that its proposed rate design reasonably allocates costs among ratepayers and adequately reflects risks. Staff acknowledges that smaller vessels will pay more, but that larger ships will still pay more than smaller ships, which appropriately reflects the additional risks of moving larger vessels. Staff further contends that the Service Time charge will provide additional compensation when ships must be navigated slowly or require more than one pilot to be moved safely. Staff argues that PSP's criticism of Staff's failure to adequately address risk in its rate design is unsupported because PSP did not provide any metric to evaluate risk. Finally, Staff argues that recovering pilot compensation through Service Time charges more fairly compensates pilots for actual labor and mitigates the trend of increasing vessel sizes generating additional tariff revenues in the absence of any rate increase. Staff argues in its reply brief that its rate design reflects a reasonable allocation of costs among ratepayers based on the principle of cost-causation rather than a customer's ability to pay.

---

[584] Moore, Exh. MM-42T at 27:24-26, 28:25-26, and 29:1.

[585] Moore, Exh. MM-45.

355 In its reply brief, PSP disputes PMSA's proposal to adopt a traditional rounding convention, arguing that rounding up in all instances is reasonable because it increases invoice predictability. PSP claims that a decision to reduce the interval for rounding up will increase the underlying hourly rate because "the price out itself relied upon rounded intervals."[586]

Commission Determination

356 We adopt PSP's proposed tariff restructuring, subject to PSP's incorporation of traditional hourly rounding rules as PMSA proposes. PSP's proposed tariff simplifies charges for ratepayers while avoiding rate shock. We also adopt Staff's proposed vessel projections, which are based on adjusting historical information in light of Department of Ecology reports. This results in a gradual increase in pilotage rates without departing from the traditional focus on vessel size in setting rates.

357 We agree with PSP witness Capt. Moreno that the pilotage tariff should be simplified.[587] The existing tariff structure, as set forth at WAC 363-116-300, involves numerous provisions that make it difficult to understand how charges are applied. PSP's proposed tariff maintains the distinction between Inter-Harbor Vessel Movements and Harbor Shifts, but provides a clearer description and separation of these types of assignments.[588] The proposed tariff does away with the "LOA [Length Over All] Rate Schedule" in the current tariff, using a more easily understood Service Time charge.[589] The proposed tariff also clearly describes other possible charges, such as the additional pilot charge.[590]

358 We likewise agree with Capt. Moreno that the tariff allows for a "truing up" of pilotage charges for different vessel sizes.[591] As Capt. Moreno explains, vessels have continued to increase in size, and the current tariff tends to overcharge larger vessels because it was implemented prior to recent advances in shipbuilding.[592] The current tariff in fact provides for an inclining tonnage rate, with per gross ton charges increasing as vessels

[586] PSP Reply brief ¶ 70.

[587] *See* Moreno, Exh. SM-1T at 7:22-8:14.

[588] *See* Burton, Exh. WTB-8 at 11.

[589] *See id.*

[590] *Id.* at 12-14.

[591] *See* Moreno, Exh. SM-1T at 8:3-10.

[592] *See id.*

move up in size categories.[593] PMSA witness Capt. Moore makes a similar observation, explaining that the continuous increase in ship sizes results in increasing revenue per vessel assignment.[594] PSP's proposed tariff strikes a reasonable balance, charging larger vessels more but abandoning the inclining gross tonnage charges that resulted in larger vessels being overcharged.

359 We decline to adopt Staff's proposed tariff, which would place more weight on the Service Time charge and less weight on the Gross Tonnage charge. We are primarily concerned that Staff's proposal would result in rate shock for smaller vessels. As Capt. Moreno testifies, Staff's proposed tariff would result in significant rate increases for the smaller vessels still subject to compulsory pilotage.[595] Capt. Moreno gives various examples, such as the *Pioneer*, a 499 ton yacht that would face a 234.46 percent increase in rates, and the *Global Round*, a 21,158 ton bulk carrier that would face a 195.73 percent increase in rates.[596] Capt. Moore raises the same concern and provides his own table showing these increased rates for smaller vessels.[597] These are significant increases and depart from our normal, gradual approach to increasing rates in regulated industries.

360 We are also concerned that Staff's proposal does not attribute sufficient costs to the largest vessels that pose the greatest risks. To be clear, we agree with PMSA that risk should not be a factor in raising rates.[598] Vessel incidents that occur while under pilot control in the Puget Sound have been decreasing over time, despite the continually increasing size of the largest ships.[599] Pilot ladders have also received additional scrutiny in recent years.[600] Capt. Moore testifies that there is "no debate" that newer vessels have incorporated several innovations that contribute to increased safety.[601] We are not faced with evidence that *absolute* risk is increasing for pilots in the Puget Sound, which would

---

[593] WAC 363-116-300.

[594] Moore, Exh. MM-1T at 15:21-26.

[595] Moreno, Exh. SM-2T at 12:5-17.

[596] Moreno, Exh. SM-4.

[597] Moore, Exh. MM-42T at 27:20-29:23; Exh. MM-45.

[598] *See* PMSA Initial Brief ¶¶ 70-71.

[599] Moore, Exh. MM-1Tr at 85-90; Moore, Exh. MM-25r.

[600] Moore, Exh. MM-1Tr at 82:18-24.

[601] *Id.* at 85:4-17.

justify greater compensation. However, in terms of pilotage rate design, it is appropriate to attribute costs to the vessels based on *relative* risks.

361 For pilots bringing a ship into harbor, larger vessels pose relatively greater risk and should thus pay proportionally more in tariff rates. Capt. Moreno credibly testifies that the largest vessels pose greater risks when entering the Puget Sound and require greater expertise.[602] He identifies several factors that make larger vessels more difficult to maneuver safely in confined waters.[603] Given this testimony, we are persuaded that the larger vessels reasonably pose greater risks. We therefore agree with Capt. Moreno that Staff's emphasis on the Service Time charge fails to recognize the skillset required to safely maneuver larger vessels.[604] Indeed, the BPC's safety regulations allow new pilots to take responsibility for the highest tonnage vessels only after they first gain experience with smaller vessels.[605] By placing greater weight on the tonnage charge, as PSP advocates, PSP appropriately charges these larger vessels for creating greater risks relative to smaller vessels. This is consistent with traditional principles of pilotage rate design.[606] Since the mid-1970s, pilotage boards in the U.S. have primarily based rates on a vessel's gross tonnage as the best means of allocating costs.[607]

362 Although we do not accept Staff's tariff proposal, we agree with Staff and PMSA that that the profitability of larger vessels should not justify imposing greater costs on those vessels. As Staff witness Sevall explains, Staff did not impose additional costs on larger vessels in light of their greater profitability because doing so "goes against one of the core principles in regulated rate setting."[608] It is instead appropriate to charge vessels based on the principle of cost causation.[609]

363 With regards to projected vessel assignments, we agree with Staff's projection of 7,310 assignments, adjusting test year assignments by the percentage change in vessel traffic

[602] Moreno, Exh. SM-2T at 3:10-22.

[603] *Id.* ("A non-exhaustive list would include such factors as Mass, Block Coefficient, Squat, Blockage factor, Center of Gravity, Wind Loads, Waterway design relative to the vessel, and wake.").

[604] *Id.* at 2:16-18.

[605] *See generally* WAC 363-116-082 (limiting licenses of new pilots).

[606] *See* Moreno, Exh. SM-2T at 2:1-18.

[607] Quick, Exh. GQ-1T at 13:1-7.

[608] Sevall, TR 661:15-22.

[609] *See id.*

based on the VEAT report from the Washington Department of Ecology.[610] This is the most reasonable approach for the purposes of rate-setting because it reflects known and measurable adjustments to the test year assignments.

364 PSP asserts that Staff's five-year average will not be as accurate as Dr. Khawaja's econometric model, which predicts a total number of vessel assignments of 6,989 for 2020.[611] This is mere speculation. We question whether relying on Dr. Khawaja's testimony results in an accurate forecast because it is premised on economic factors in place before November 19, 2019, when his testimony was filed.[612]

365 Furthermore, PSP appears to misunderstand Staff's testimony on this issue. While Staff witness Sevall relied on a five-year average for the purposes of determining a TAL and the number of pilots to fund, Sevall did not rely on a five-year average to arrive at 7,310 projected assignments.[613] Sevall instead determined that there were 7,334 assignments during the test period, and he adjusted this number based on the percentage change in vessel traffic from 2018 to 2019, as identified in VEAT.[614]

366 For purposes of rate-setting, we find that adopting Staff's adjustment to the test year data is the most reasonable approach. Adjusting the test year assignments by the percentage change in vessel traffic allows for gradual changes in pilotage rates based on known and measurable data. We observe that the Oregon Board of Maritime Pilots came to a similar decision in 2010, choosing to rely on the use of 2009 data for ratemaking purposes.[615] We therefore adopt Staff's projected vessel traffic for the rate year. When PSP submits its compliance filing to effectuate the terms of this Order, it should recalculate the tariff rates based on Staff's projection of 7,310 assignments.

367 We note here that no party has advocated to reflect the effects of the COVID-19 pandemic in revised vessel projections. Both PSP and Staff agree that it would be highly

---

[610] *See* Sevall, Exh. SS-1T at 9:1-5.

[611] PSP Initial Brief ¶ 104. *See also* Khawaja, Exh. SK-1T at 4:16-24, 5:1-10 (predicting 6,989 assignments).

[612] *See generally* Khawaja, SK-1T (filed November 19, 2019).

[613] *See* Sevall, Exh. SS-1T at 9:1-19.

[614] *Id.* at 9:1-9.

[615] Carlson, IC-31X at 4-5 (Oregon Board of Maritime Pilots Final Order No. 10-01, Issued May 19, 2010).

speculative to attempt to normalize the effects of the recent decline in shipping traffic.[616] We agree. The pandemic occurred after the test year, which ended on June 30, 2019.[617] It is difficult to predict how shipping will recover and over what timeframe, making any adjustments to the test year highly speculative.[618]

368 Finally, we adopt PMSA's proposal to apply traditional rounding rules to service time charges.[619] Under traditional rounding rules, increments of time of 0.49 hours or less are rounded down, and increments of time of 0.5 hours or more are rounded up. As PMSA notes, this does not affect the total revenue generated by the tariff.[620] We determine that traditional rounding rules provide a more reasonable approach than rounding up regardless of actual time incurred, and will prevent some vessels from paying greater costs for assignments that exceed the hour mark by only a few minutes. It also prevents unintended consequences in rate case proceedings when parties must rely on workload data that is always rounded up to the next hour. PSP will need to recalculate the tariff rates to ensure that the rates will continue to recover the revenue requirement when the traditional rounding convention is applied.

369 We require PSP to file revised tariff pages to implement the decisions reflected in this Order. The tariff should be based on PSP's proposed tariff design, modified by the application of traditional rounding rule and Staff's 7,310 projected vessel assignments.

E. UNCONTESTED ADJUSTMENTS

370 PSP proposes 20 restating and pro forma adjustments to its revenue requirement that are not contested by any party. These adjustments are listed in Appendix A to this Order as part of the total authorized revenue requirement, and are also provided below.

Description	Restating	Pro Forma	Adjusted Balance
Finance Charges	39,244		(0)
Administrative Expenses	(12,000)		24,106
Provisions for Unreceivable A/R	8,622		10,102
Capital Assets	16,568		0

[616] PSP Initial Brief ¶ 105; Staff Initial Brief ¶ 66, n.142.

[617] *See* Burton, Exh. WTB-1T at 6:16-18.

[618] *See* BE-4 (PSP response to Bench Request No. 4).

[619] *See* PMSA Initial Brief ¶¶ 23-26.

[620] *See id.* at ¶ 23.

CPA Fees		6,848	77,780
Donations	(14,670)		0
Dues	(6,636)		157,048
Employee Health & Welfare	6,230	14,438	285,802
Employee Pension	(28)		154,491
Amortization Expense	(345)		0
Insurance		(12,900)	279,617
Interest, Dispatch Software	(6,752)		0
License Fees – Pilots		(19,500)	313,000
Lobbyist	(75,914)		0
Rents		42,918	196,607
Salaries	18,670	39,374	1,690,719
UTC Fees		123,333	123,333
Training, Pilots		53,880	238,596

Commission Determination

371 Each of these adjustments is uncontested and is adequately supported by the record. Accordingly, we find that these uncontested adjustments should be approved without condition.

F. TARIFF FORMAT

372 PSP filed a proposed tariff in this proceeding without identifying proposed changes in legislative format, as required by WAC 480-160-110 and WAC 480-07-525(2). These regulations require parties to identify changes to the tariff's language using strikethroughs, underlining, and other specific codes.

373 PSP witness Burton acknowledges the requirements of WAC 480-07-525(2), but explains that PSP is proposing a "wholesale change" to tariff rates with a "new format and design."[621] Burton contends that submitting proposed changes in legislative format would thus be meaningless.[622] As an example, Burton points to PSP's proposal to remove "LOA" from 402 items in the current tariff.[623]

---

[621] Burton, Exh. WTB-1Tr at 4:9-20.

[622] *Id.*

[623] *Id.*

Commission Determination

374 We grant PSP an exemption from the requirements of WAC 480-160-110 and WAC 480-07-525(2) on our own motion. Pursuant to WAC 480-07-110, the Commission may, in response to a request or on its own motion, grant an exemption from its own rules when "consistent with the public interest, the purposes underlying regulation, and applicable statutes." Here, we agree with Burton that it would serve little purpose to require PSP to file its proposed tariff in legislative format. To the extent a party wishes to compare PSP's proposed tariff to the current tariff, the party may simply refer to the current tariff at WAC 363-116-300.

375 This exemption applies to the compliance filing required by this order. Because we reject PSP's tariff filing and require it to submit a revised tariff, PSP may submit this compliance filing without marking changes to the tariff in legislative format. For ease of reference, PSP should attach its current BPC tariff as an appendix to its Commission-filed tariff.

G. PMSA – MISCELLANEOUS PROPOSALS

376 PMSA makes several proposals in testimony and in its briefs to "provide direction for improving accountability and transparency for the public and for the ratepayer customers of the pilotage monopoly on the Puget Sound."[624]

377 Specifically, PMSA requests the Commission order PSP, Staff, and stakeholders to continue to address issues of pilot staffing, retirement, expenses and administrative review, competitiveness, rate of return methodology, and yacht exemptions.

378 First, PMSA supports Staff's proposal to initiate a queuing study to design an appropriate staffing system for the Puget Sound pilotage district and to combat inefficiencies in workload management.

379 Second, PMSA recommends that Staff conduct a review of PSP's expenses and administrative practices through a performance audit before PSP is authorized to file another general rate case. PMSA proposes that the performance audit should address Staff's proposed restating and pro forma adjustments, including transportation expense, legal expense, charitable organizations and sponsorship, travel and entertainment expense, and consulting fees expense. PMSA further advocates that the performance

---

[624] PMSA Initial Brief ¶ 77.

audit examine medical plan expenses, the ongoing post-retirement expenses for a retired PSP executive director, and a job task analysis. PMSA supports increased rates to cover the costs of the audit.

380 Third, PMSA requests the Commission issue a policy statement that addresses the applicability of the Pilotage Act and provides guidance to PSP related to presenting a proposed rate of return.

381 Finally, PMSA requests the Commission facilitate a specific process for input from the seaports in the Puget Sound pilotage district by convening a public comment hearing in future general rate proceedings.

382 PSP objects generally to PMSA's request that "the Commission substitute its judgment for that of PSP's Board of Directors," which it characterizes as a request that the Commission overstep its authority.[625]

383 PSP argues that courts have repeatedly rejected the premise that regulators may substitute their judgment for that of a regulated company in the absence of a clear abuse or inefficiency by the company. PSP thus requests the Commission reject PMSA's "numerous overreaching requests."[626]

384 Staff also recommends the Commission reject PMSA's request for a performance audit because it may be tantamount to pre-approval of PSP's operations.[627]

Commission Determination

385 We decline to adopt PMSA's recommendations to order PSP, Staff, and stakeholders to continue to address issues of pilot staffing, expenses and administrative review, and competitiveness. Although we anticipate that the parties will continue to engage in productive discussions related to these issues in the interest of finding common ground for future general rate proceedings, PSP aptly notes that the Commission is not PSP's financial manager. Although the record contains examples of inefficiencies, as detailed in other portions of this Order, the Commission does not manage the day-to-day operations of regulated public service companies. Instead, the Commission employs regulatory tools

---

[625] PSP Reply Brief ¶ 72.

[626] *Id.*at ¶73.

[627] Staff Reply Brief ¶ 5.

to encourage efficiencies and reviews expenses prior to authorizing any recovery of costs incurred.

386 For example, when the Commission considers whether to allow certain capital investments into rates, it applies a long-standing legal standard for evaluating the prudence of the investment: "what a reasonable board of directors and company management have decided given what they knew or reasonably should have known to be true at the time they made a decision."[628] Prudence thus can only be evaluated after-the-fact, both to maintain an appropriate boundary between decisions best left to company management and to preserve due process by allowing all parties to weigh in on the prudence of a company's investment decisions. These long-standing practices allow the Commission to ensure that investments for which regulated companies seek recovery are prudently incurred without interfering with decisions more appropriately left to a company's board or management.

387 For those same reasons, we decline to require a performance audit. First, we agree with Staff and PSP that a performance audit, as PMSA requests, is neither necessary nor appropriate. As Staff observes, the Legislature granted the Commission unmitigated access to PSP's records. RCW 80.04.070 provides that the "Commission and each commissioner, or any person employed by the commission, shall have the right, at any and all times, to inspect the accounts, books, papers, and documents of any public service company." As such, Staff may access PSP's records at any time.

388 We also share Staff's concerns that a performance audit "could be construed as pre-approval of PSP's expenses and administrative practices, thereby impairing future prudence reviews by the Commission."[629] As Staff notes, it is imperative that the Commission maintain an arm's length relationship with the management decisions of regulated companies to preserve the ability to evaluate the prudence of company decisions in the context of a general rate proceeding which, as discussed above, ensures due process and transparency by allowing all parties to participate. We also decline to require a queuing study. Again, the Commission does not involve itself in the day-to-day workload assignment decisions of regulated public service companies.

389 Finally, we determine that PMSA's request for a Commission policy statement on the application of the Pilotage Act is premature at this juncture. Under RCW 88.16.055, the

---

[628] *WUTC v. Puget Sound Power & Light Company*, Cause No. U-83-54, Fourth Supplemental Order at 32 (September 28, 1984).

[629] Staff Reply Brief ¶ 47.

Commission is required to submit a report "to the governor and the transportation committee of the Legislature regarding matters pertaining to establishing tariffs under this section that includes a comparison of the process and outcomes in relation the recommendations made in the January 2018 joint transportation committee Washington state final report" by July 1, 2021. Prior to submitting its report, the Commission will solicit input from stakeholders. PMSA should utilize that venue to put forth its suggestions and offer its perspective on the Commission's processes, including any recommendations for additional guidance or policy statements.

390 We do, however, agree with PMSA that PSP, Staff, and other stakeholders should conduct a Staff-led technical workshop to address rate of return methodology in the context of setting rates for pilotage service. Such a workshop should include a discussion on developing an appropriate revenue requirement and TDNI, and an analysis of the feasibility of applying rate of return methodologies used in utility rate setting to pilotage ratemaking. These workshops should occur on the same timeline as the stakeholder participation in the Commission's report to the Legislature because the outcome of those discussions will likely inform the Commission's findings.

391 We also agree that subsequent rate case proceedings should include a public comment hearing. Although the Commission received written public comments in this proceeding, we find that convening a public comment hearing in future proceedings will afford seaports and other interested persons, either those who do not qualify as parties or those who choose not to seek participation as full parties, the opportunity to provide feedback for the Commission's consideration when adopting rates.

H. PYM – REQUEST FOR SEPARATE TARIFF RATE

392 PYM requests the Commission require PSP to file a separate tariff governing pilotage rates for foreign-flagged recreational vessels.[630] PYM witness Webber testifies that under RCW 88.16.070, foreign flagged vessels of any size are subject to compulsory pilotage; however, a recreational vessel under 200' LOA or under 1,300 gross tons may apply for an exemption.[631] Webber submits that compulsory pilotage has a negative impact on the recreational yacht industry in Washington state, as port facilities in Puget Sound compete with San Diego and British Columbia to provide services to yachts.[632]

---

[630] Webber, Exh. MW-1T at 2:1-4.

[631] *Id.* at 2:7-13.

[632] Webber, Exh. MW-1T at 6:2:14.

393 In its initial brief, PMSA recommends that the Commission order PSP to work with Staff, BPC staff, and PYM to address the concerns of specialized recreational vessels. Specifically, PMSA recommends that PSP should work to eliminate assignments involving recreational vessels that involve little risk.[633]

Commission Determination

394 We decline to require a separate tariff rate for foreign-flagged recreational vessels. Pilotage rates should be based on PSP's cost of service. PSP is required to provide pilotage for foreign-flagged vessels pursuant to RCW 88.16.070, and should be able to recoup those costs. While we agree with PMSA that a yacht owner's financial standing should not be a justification for imposing higher costs,[634] we will not order reduced rates for a specific class of ratepayer based on generalized complaints regarding the cost of service. Nor will we set rates that require other vessel owners to subsidize pilotage costs for foreign-flagged recreational vessels. Our decision instead seeks to provide reasonable rates for these foreign-flagged recreational vessels by adopting PSP's proposed rate design, attributing higher costs to larger vessels, and increasing rates gradually.

395 The evidentiary record in this proceeding provides little support for reduced rates for foreign-flagged recreational vessels. Webber testifies that yachts operate on "very tight" budgets and that even a $6,000 fee for an orientation cruise will "most likely" lead a vessel to choose another port.[635] However, Webber acknowledges that Washington state's repair facilities and proximity to cruising grounds makes it a desirable port for yachts.[636] Thus, we question whether pilotage fees would lead large yachts, greater than 200' in length or exceeding 1,300 gross tons in weight, to travel thousands of miles to other ports.

396 Even if some yachts have chosen to continue on to British Columbia to receive services from a lower-cost Pilotage Waiver Officer,[637] this does not justify granting these vessels lower rates than what might otherwise be supported by traditional rate-setting principles.

---

[633] PMSA Initial Brief ¶ 89.

[634] *See id*.

[635] Webber, TR 546:11. *See also* Webber, Exh. MW-1T at 6:2:14 (indicating yachts may travel to San Diego or British Columbia for services).

[636] *Id.* at 5:11-24.

[637] Webber, TR 546:20-22. *See also* Webber, Exh. MW-1T at 6:8-12 (discussing Pilotage Waiver Officers).

The Legislature has created a system of compulsory pilotage in Washington, and it is the Legislature's prerogative to change that system.

397 Further, to the extent that PMSA and PYM suggest that PSP should work on reducing pilot assignments for yachts, we observe that it is the BPC's responsibility to grant exemptions from compulsory pilotage.[638] We decline to order discussions between the parties on an issue that is properly within the purview of the BPC.

III. FINDINGS OF FACT

398 Having discussed above in detail the evidence received in this proceeding concerning all material matters, and having stated findings and conclusions upon issues in dispute among the parties and the reasons therefore, the Commission now makes and enters the following summary of those facts, incorporating by reference pertinent portions of the preceding detailed findings:

399 (1) The Commission is an agency of the State of Washington vested by statute with the authority to regulate rates for pilotage services subject to the Washington Pilotage Act.

400 (2) The BPC is generally charged with the administration and enforcement of the Washington Pilotage Act, including establishing a comprehensive pilot training program, issuing pilot licenses, and determining the number of pilots necessary to be licensed in each pilotage district to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service in each district.

401 (3) Effective July 1, 2019, the Legislature transferred the BPC's jurisdiction over rate-setting to the Commission. The Commission is charged with determining the rates for pilotage services and ensuring that the tariffs provide rates that are fair, just, reasonable, and sufficient for the provision of pilotage services. The Legislature did not transfer the BPC's jurisdiction over training, licensure, or other aspects of the Pilotage Act to the Commission.

402 (4) PSP is a "[p]erson with a substantial interest" that filed a proposed tariff for pilotage services, as that term is defined in RCW 81.116.010. PSP provides pilotage services to vessels in the Puget Sound pilotage district.

---

[638] RCW 88.16.070.

403 (5) PSP's current tariff, set forth at WAC 363-116-300, was established by the BPC. Pursuant to RCW 81.116.050, this tariff remains in effect and is deemed established by the Commission until such time as it is changed by Commission order.

404 (6) On November 19, 2019, PSP filed with the Commission its proposed tariff.

405 (7) PSP requests a total revenue increase of 39.89 percent ($48,027,598) over a three-year rate plan. This proposal reflects funding for 61.6 FTE pilots with a per pilot DNI of $500,000.

406 (8) The ratemaking concept of a return on equity does not easily apply to PSP's operations because PSP has a negative equity balance after accounting for its unrecorded liabilities.

407 (9) Including a "revenue per assignment" factor in the revenue requirement formula produces imprecise results.

408 (10) Staff's proposed average assignment level of 143.4, resulting in 51.98 funded FTE pilots, is supported by the evidence in the record.

409 (11) As of November 5, 2020, PSP has 49 FTE pilots, including PSP's president.

410 (12) PSP projects that 52 FTE pilots will be licensed by the end of 2021.

411 (13) The record evidence is insufficient to support PSP's proposal to designate a second FTE pilot, PSP's vice president, as an administrative position. Rather, the evidence demonstrates that some of the vice president's duties could be delegated to an analyst or another employee who does not require the salary of a licensed pilot.

412 (14) The Commission's statutory authority for establishing pilotage rates does not expressly require it to consider other pilotage districts as comparators for the purpose of establishing an appropriate level of DNI.

413 (15) PSP acknowledges that very few pilotage districts make their compensation information public. PSP provided publicly available information from the only nine state-licensed pilot associations that make such data available.

414 (16) PSP's evidence on comparable pilotage districts is incomplete. PSP has failed to provide financial statements from each of the nine associations, making it difficult to evaluate the comparability of these pilot associations' compensation.

415 (17) PSP failed to establish clear criteria by which to evaluate the comparability of other pilotage districts, and PSP's witnesses provide conflicting testimony on the appropriate criteria for determining whether a pilotage district is comparable to the Puget Sound district.

416 (18) PSP's evidence related to vessel traffic as a comparability factor is incomplete. PSP failed to provide specific analysis in its testimony regarding the mix of vessel traffic in the various pilot associations that were offered for comparison, and none of PSP's witnesses provided actual data on the subject.

417 (19) The record evidence fails to demonstrate that PSP is experiencing a shortage of applicants for the Puget Sound pilot training program administered by the BPC. The BPC maintains a multi-year waiting list for those seeking training and licensure in the Puget Sound pilotage district.

418 (20) The record evidence demonstrates that PSP pilots do not leave the Puget Sound pilotage district to work in other districts, that they frequently work until the mandatory retirement age of 70, and that PSP's historical compensation levels have not resulted in attrition.

419 (21) The record evidence is insufficient to support a finding that PSP's proposed DNI of $500,000 is comparable to pilot income in other pilotage districts, or that it is necessary to attract and retain candidates or prevent pilot attrition.

420 (22) The record evidence supports Staff's methodology for determining an appropriate level of DNI based on five years of data (2014-2018), adjusted for inflation of the reported amounts to the current period based on an average of actual income.

421 (23) Staff appropriately assumes that the prior rates established by the BPC were reasonable during the periods in which they were effective, which properly respects the division of regulatory authority between the Commission and the BPC.

422 (24) PSP's unfunded retirement program is fiscally unsound, vulnerable to changing economic conditions, and does not recognize the extent of liability incurred.

423 (25) A fully funded, defined-benefit retirement plan will best provide security and confidence in the long-term viability of the promised retirement benefits to current and future pilots.

424 (26) PSP's proposal to fund 61.6 FTE pilots is based on a TAL that was rejected by the BPC and an alternative view of the NASA fatigue study, which the BPC has not yet adopted.

425 (27) Funding the "burning" of callback days in rates amounts to double-charging ratepayers for pilotage services. The vessels would be required to pay once for the initial callback assignment and then continue to pay higher rates because PSP has not provided for the funding of its own banked compensatory program.

426 (28) When the number of licensed pilots falls below the number of funded pilots, the licensed pilots receive additional income reflecting the additional work they perform through callback assignments.

427 (29) PSP's proposed restating and pro forma adjustments for the medical insurance expenses of PSP employees, who are not member pilots, is reasonable and should be accepted.

428 (30) PSP is an association of independent contractors sharing common services, which historically have not provided medical coverage for member pilots.

429 (31) PSP's longstanding practice of reimbursing pilots for transportation based on the costs of taxi fare was not controversial.

430 (32) PSP's three-month Transportation Study fails to adequately represent PSP's historical transportation expenses and departs from PSP's past practice without justification.

431 (33) PSP has not established that its proposed transportation adjustment is a prevalent industry practice or a reasonable expense for ratepayers to bear.

432 (34) PSP's proposal to recover the $150,000 SILA charge directly contradicts the Legislature's intent and statutory language, which requires both pilots and ratepayer vessels to share responsibility for funding the BPC's SILA premium.

433 (35) Staff's proposal to amortize 50 percent of the $47,748 in rate case consulting fees over a three-year period and 50 percent over a seven-year period, which

appropriately recognizes the lasting value these services will provide PSP, is reasonable and should be accepted.

434 (36) PSP's proposal to depreciate its two pilot boats, the *Puget Sound* and the *Juan De* Fuca, over a 20-year period of time based on the requirements set forth in 46 C.F.R. § 382.3 (b)(2)(i) should not be accepted.

435 (37) With regards to the *Puget Sound*, PSP will have recognized 20 years of depreciation by December 2019. PSP's proposal to include the costs of depreciation in rates when PSP has already had a full opportunity to recognize the costs attributed to this pilot boat is inappropriate.

436 (38) Eight assets identified in PSP's depreciation schedule will be fully depreciated prior to the rate year.

437 (39) PSP properly excludes charitable contributions, sponsorships, and scholarships from test year expenses.

438 (40) PSP's test year expenses of $339,108 for office equipment leases are reasonably related to the provision of pilotage expenses.

439 (41) Pilot licensing and conference fees are reasonably related to the provision of pilotage services.

440 (42) PSP's proposed tariff is easier to understand than the current tariff, appropriately allocates costs, and simplifies charges for ratepayers while avoiding rate shock.

441 (43) PSP did not file its proposed tariff in legislative format, as required by WAC 480-160-110 and WAC 480-07-525(2).

442 (44) PSP's currently effective rates do not provide sufficient revenue to recover the costs of its operations or provide for a fair compensation for pilot labor.

IV. CONCLUSIONS OF LAW

443 Having discussed above all matters material to this decision, and having stated the following summary conclusions of law, incorporating by reference pertinent portions of the preceding detailed conclusions:

444 (1) The Commission has jurisdiction over the subject matter of, and parties to, this proceeding.

445 (2) PSP is a group of licensed pilots providing pilotage services subject to Commission jurisdiction.

446 (3) As a "[p]erson with a substantial interest" that filed a proposed tariff for pilotage services, as that term is defined in RCW 81.116.010, PSP has the burden to establish that the current tariff is not fair, just, reasonable, and sufficient. The Commission's determination of whether the person with a substantial interest has carried its burden is adjudged based on the evidentiary record.

447 (4) PSP's existing rates for pilotage services are not fair, just, reasonable, or sufficient and should be adjusted prospectively after the date of this Order.

448 (5) PSP's proposal to increase rates by 39.89 percent ($48,027,598) over a three-year rate plan, which reflects funding for 61.6 FTE pilots with a DNI of $500,000 per FTE pilots will not result in rates that are fair, just, reasonable, and sufficient, and therefore should be denied.

449 (6) PSP's request to fund in rates 61.6 FTE pilots based on an annual TAL of 118 infringes on the BPC's statutory authority to determine the number of pilots necessary for the provision of safe, efficient pilotage service.

450 (7) PSP's proposal to fund 61.6 FTE pilots would result in an overvaluation of all vessel assignments, including callbacks, and would unjustly require vessels to pay for an implied number of pilots that exceeds the number of pilots the BPC has authorized.

451 (8) Because the BPC is charged with determining the number of pilots necessary for safe, efficient pilotage service, the Commission should not determine a TAL for purposes of safety or fatigue management.

452 (9) The Commission is not charged with regulating the safety of marine pilotage or determining the number of authorized pilots, and is thus unable to resolve the parties' disputes regarding the efficiency of PSP's dispatch system, the appropriate TAL for pilots, and other workload issues.

453 (10) Consistent with the evidence in the record, Staff's revenue requirement formula appropriately reflects PSP's business structure as an association of professionals that distributes nearly all its earnings to the pilot owners.

454 (11) Staff's proposed average assignment level of 143.4, resulting in approximately 52 FTE pilots, is consistent with the principle that pro forma adjustments must reflect known and measurable expenses. Using this figure for rate setting purposes ensures that the number of funded pilots will result in fair, just, reasonable, and sufficient rates.

455 (12) Staff's proposal to fund 51.98 FTE pilots represents the most reasonable adjustment to the TDNI calculation for purposes of determining a revenue requirement.

456 (13) It is consistent with historical rate-setting practices and policies to adopt a two-year rate plan to authorize funding for 50 FTE pilots in year one and 52 FTE pilots in year two to (1) decrease rate shock to ratepayers and more accurately reflect the actual number of working pilots during the first year of the rate plan, (2) increase DNI in year two to account for inflation, and (3) transition to recognizing only 50 percent of pilot medical insurance expenses as an operating expense in year two of the rate plan.

457 (14) It is reasonable to continue including in rates one administrative pilot position for the PSP president.

458 (15) PSP's request to fund a second administrative position for PSP's vice president should be denied.

459 (16) PSP's proposed DNI of $500,000 per FTE pilot would not result in rates that are fair, just, or reasonable.

460 (17) Staff's proposed DNI of $400,855 per FTE pilot, based on a five-year average of historical DNI levels and adjusted for inflation, is reasonable, consistent with ratemaking principles, supported by the record evidence, and will result in rates that are fair, just, reasonable, and sufficient.

461 (18) PSP should be authorized and required to make a compliance filing in this Docket to recover in prospective rates a total revenue requirement of $35,882,859 in year one of the two-year rate plan, which includes a DNI of $400,855 per FTE pilot, resulting in a TDNI of $20,042,750.

462 (19) PSP should be authorized and required to make a compliance filing in this Docket to recover in prospective rates a total revenue requirement of $36,308,428 in year two of the two-year rate plan, which includes a DNI level of $410,075 to reflect a

2.3 percent cost-of-living adjustment, resulting in a TDNI of $21,323,883. This adjustment, which is based on the 2019 Consumer Price Index for All Urban Consumers, will result in rates that fair, just, reasonable, and sufficient.

463 (20) PSP should be required to initiate discussions as described in paragraphs 191 through 193 of this Order to develop a plan to transition to a fully funded, defined-benefit retirement program and full accrual accounting. Any agreements, recommendations, or contested issues that arise from the workshops, and PSP's responses thereto, should be included in PSP's initial filing in its next general rate case.

464 (21) PMSA's request to exclude the $70,000 annual retirement payment for PSP's former executive director from rates should be denied, and the parties instead should be directed to address this issue in their retirement plan transition discussions.

465 (22) PSP's request to recover its callback liability in rates would result in double recovery, and thus would not result in rates that are fair, just, or reasonable.

466 (23) PSP should be required to defer the revenue from a callback assignment to properly attribute the costs to the vessel that caused PSP to incur the expense at the time the expense was incurred.

467 (24) PSP should be required to use full accrual method accounting, which will appropriately recognize the implications of creating a banked compensatory program.

468 (25) PSP's proposed restating adjustment for PSP's non-pilot employee medical insurance expenses should be allowed.

469 (26) It is fair, just, and reasonable for pilots, who are independent contractors, to transition to paying for medical coverage through their DNI rather than PSP paying that expense on the pilots' behalf from PSP's organizational operating expenses.

470 (27) In year one of the two-year rate plan the Commission adopts by this Order, PSP should include the full value of pilot medical insurance expense in its revenue requirement by recognizing $1,711,128 in pilot medical insurance expenses as an operating expense.

471 (28) In year two of the two-year rate plan adopted in this Order, only 50 percent of pilot medical insurance expenses should be included as an operating expense.

472 (29) PSP's proposed pro forma adjustment for transportation expenses should not be allowed in the revenue requirement, but Staff's proposed adjustment to transportation expenses, which is based on historical costs under the current tariff, is reasonable and should be accepted.

473 (30) Staff's restating and pro forma adjustments for both general legal expenses and rate case legal expenses are reasonable and should be included in PSP's revenue requirement. Staff's proposal to allow $283,382 in general legal expense for the test year should be accepted. Similarly, Staff's proposal to amortize half of the $785,645 in legal expenses attributed to PSP's rate case over a three-year period, and half over a seven-year period, is reasonable because it appropriately recognizes the foundational work performed on PSP's first general rate case before the Commission.

474 (31) After considering the Legislature's 2019 Transportation Budget and legislative history, the Commission concludes that the $150,000 expense for SILA should not be included as a line item in PSP's tariff or passed through to vessels. PSP's proposal ignores the Legislature's clear decision to freeze PSP's rates to prevent PSP from passing through the $150,000 expense to ratepayers.

475 (32) PSP's restating adjustment for consulting fees, subject to the amortization periods recommended by Staff, is appropriate for setting fair, just, reasonable, and sufficient rates.

476 (33) The U.S. Department of Transportation Maritime Administration rule, 46 C.F.R. § 382.3, is concerned with submissions before a federal agency and does not apply to this proceeding.

477 (34) PSP should be allowed to recover depreciation expenses in rates, subject to Staff's proposed adjustments regarding the *Puget Sound*, the *Juan de Fuca*, and eight other assets that will be fully depreciated by the rate-effective year.

478 (35) With respect to the *Juan de Fuca*, Staff's proposed depreciation based on the "remaining life" of the vessel, consistent with Commission precedent, is reasonable and should be accepted.

479 (36) Recovery of expenses for swag, such as the $4,324 expense for "uniforms" included in PSP's proposed revenue requirement, is not appropriate. Staff's proposal to remove these expenses is reasonable because promotional or marketing expenses cannot be recovered in rates.

480 (37) PSP's test year expenses for office equipment leases are reasonable and should be included in the revenue requirement.

481 (38) PSP's test year expenses for pilot licensing fees and conference costs are reasonable and should be included in the revenue requirement.

482 (39) Staff's proposed tariff, which would place more weight on the Service Time charge and less weight on the Gross Tonnage charge, would result in rate shock for smaller vessels, some of which would be subject to rate increases as high as 234.46 percent.

483 (40) Using traditional rounding rules in PSP's tariff will result in fairer charges for vessels.

484 (41) PSP's econometric model relies on economic indicators that existed prior to November 2019, and there is no assurance that this model provides more accurate information at this time.

485 (42) Staff projects 7,310 vessel assignments by adjusting test year assignments by the percentage change in vessel traffic from 2018 to 2019, as shown in the VEAT report. Staff's projection allows for gradual changes in pilotage rates based on known and measurable data, is reasonable, supported by the evidence in the record, and should be accepted.

486 (43) PSP's proposed rate design and simplification of the tariff, recalculated to reflect traditional rounding rules and Staff's 7,310 projected vessel assignments in 2020, will result in fair, just, reasonable, and sufficient rates.

487 (44) PSP proposes 20 restating and pro forma adjustments to its revenue requirement that are not contested by any party. These adjustments are reasonable, adequately supported by the record, and should be allowed. These adjustments are listed in Appendix A to this Order as part of the total authorized revenue requirement.

488 (45) Given PSP's proposed simplification and amendments to the current tariff, it would serve little purpose to require PSP to file the proposed tariff using a legislative format.

489 (46) Granting PSP an exemption from the legislative format required by WAC 480-160-110 and WAC 480-07-525(2) on the Commission's own motion is appropriate because doing so is consistent with the public interest, the purposes underlying regulation, and applicable statutes.

490 (47) PMSA's recommendations to order PSP, Staff, and stakeholders to continue to address issues of pilot staffing, expenses and administrative review, and competitiveness should be denied because the Commission does not manage the day-to-day operations of regulated public service companies.

491 (48) PSP should not be required to perform a performance audit or queuing study, as the decision to perform such an audit is the responsibility of the regulated entity, not the Commission. The Commission encourages PSP, however, to seek an outside consultant to assist it with identifying inefficiencies.

492 (49) PMSA's request for a Commission policy statement on the application of the Pilotage Act is premature at this juncture.

493 (50) PSP, Staff, and other stakeholders should conduct a Staff-led technical workshop to address rate of return methodology in the context of setting rates for pilotage service.

494 (51) PYM's request that PSP be required to file a separate tariff rate for foreign-flagged recreational vessels is not appropriate because it is the BPC's responsibility to grant exemptions from compulsory pilotage, and because PSP must apply the same tariff rate to foreign-flagged recreational vessels as it does to other vessels subject to compulsory pilotage.

495 (52) PSP should be authorized and required to make a compliance tariff filing in this docket to recover its revenue requirement in prospective rates consistent with the findings in this Order.

496 (53) The Commission Secretary should be authorized to accept by letter, with copies to all parties in this proceeding, a filing that complies with the requirements of this Order.

V. ORDER

THE COMMISSION ORDERS THAT:

497 (1) The Commission rejects the proposed tariff revisions Puget Sound Pilots filed in this docket on November 19, 2019, and suspended by prior Commission order.

498 (2) The Commission authorizes and requires Puget Sound Pilots to make a compliance filing in this docket including all tariff sheets as necessary and sufficient to effectuate the terms of this Final Order. The stated effective date in the compliance filing tariff sheets must allow five business days after the date of filing for Commission review.

499 (3) The Commission Secretary is authorized to accept by letter, with copies to all parties, a filing that complies with the requirements of this Final Order.

Dated at Lacey, Washington, and effective November 25, 2020.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

DAVID W. DANNER, Chairman

ANN E. RENDAHL, Commissioner

JAY M. BALASBAS, Commissioner

NOTICE TO PARTIES: This is a Commission Final Order. In addition to judicial review, administrative relief may be available through a petition for reconsideration, filed within 10 days of the service of this order pursuant to RCW 34.05.470 and WAC 480-07-850, or a petition for rehearing pursuant to RCW 80.04.200 and WAC 480-07-870.

APPENDIX A

Appendix A

Puget Sound Pilots GRC

Docket TP-190976

Revenue Requirement Adjustment Summary

Rate Plan - Year 1				
Funded Pilots	50			
DNI	400,855			

Line No.	Adj No.	Adjustment Title	Revenue	Expense
1		*Unadjusted Results (Revenues)*		
2		Pilotage Fees Earned	32,163,924	
3		Boat Fees Earned	1,946,016	
4		Capital Assets	16,568	
5		BPC Training Stipend	912,450	
6		Other Revenue - Interest[1]	8,531	
7		*Unadjusted Results (Expenses)* [2]		14,971,128
8		***Restating Adjustments***		
9	R-1	Finance Charge Removed		(39,244)
10	R-2	Out of Period President Stipend		(12,000)
11	R-3	Write-off Bad Debt		8,622
12	R-4	Capital Asset Removal	(16,568)	
13	R-5	Charitable Donations		(14,670)
14	R-6	APA Dues Lobby Costs		(6,636)
15	R-7	Adj Premium Payments		6,230
16	R-8	Adj Pension Payments		(28)
17	R-9	Remove Amortization non-reg		(345)
18	R-10	Restating Depreciation		252,889
19	R-11	Addt'l Pymt to MMP Health Plan		18,881
20	R-12	Premium Increase MMP Health Plan		3,285
21	R-13	Software Interest Exp		(6,752)
22	R-14	Lobbyist Exp		(75,914)
23	R-15	Additional Pension Pymts		167,499
24	R-16	Salary Increase Union Contract		18,670
25	R-17	Transportation Adj for Study		-
26	R-18	Remove Charitable Org & Sponsor		(36,319)
27	R-19	Out of Period Attny Fee		-
28	R-20	Adj per books to GL (Attny Fee)		(111,362)
29	R-21	Adj per book for Consulting Fees		(95,648)
30	C-1	Remove SB 5096		(150,000)
31		***Restating Results***	***35,030,921***	***14,898,286***
32		***Pro Forma Adjustments***		
33	PF-1	Prospective Attny Fees Rate Case		-
34	PF-2	2-yr Deferral of Attny Fees		-
35	PF-3	Consulting Fees Rate Case		-
36	PF-4	Consulting Fees CPA Rate Case		6,848

37	PF-5	Premium Increase Oct 2019		14,438
38	PF-6	Premium Increase Oct 2019		25,239
39	PF-7	Premium Increase Rate Year		119,108
40	PF-8	Addtl Pymts Pension - Pilots 2020		314,467
41	PF-9	Salary Incr Union Contract 2020		39,374
42	PF-10	Training Costs Addt'l Pilots		53,880
43	PF-11	Anticipated Licensing Costs Addt'l Pilots		39,000
44	PF-12	Additional License Ins Costs		6,450
45	PF-13	Reduced Licensing Retired		(58,500)
46	PF-14	Reduced License Ins Costs		(19,350)
47	PF-15	UTC Regulatory Fee Over 3 years		123,333
48	PF-16	Adjust for New Rent Costs Office		42,918
49	PF-17	1/2 UTC Specific Legal Fees (3 years)		130,941
50	PF-18	1/2 UTC Specific Legal Fees (7 years)		56,118
51	PF-19	1/2 UTC Specific Consulting Fees (3 years)		39,263
52	PF-20	1/2 UTC Consulting Fees (7 years)		16,827
53		***Pro Forma Results***	***35,030,921***	***15,848,640***
54		Authorized Revenue Increase	860,469	
55		Total Authorized Revenues	35,891,390	
56		Less Expenses	(15,848,640)	
57		***TDNI***	***20,042,750***	
58		*[1] Interest revenues are not collected through tariffed rates*		
59		*[2] Includes offsetting expense for passthrough of BPC Training Stipend*		

Rate Plan Year 2

Funded Pilots	52
DNI	410,075

Line No.	Adj No.	Adjustment Title	Revenue	Expense
1		*Year 1 Results*	*35,891,390*	*15,848,640*
2	C-2	Less 1/2 Insurance - Medical Pilots		(855,564)
3		Authorized Revenue Increase	425,569	
4		Total Authorized Revenues	36,316,959	
5		Less Expenses	(14,993,076)	
6		***TDNI***	***21,323,883***	