

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET NO. TP-190976

PUGET SOUND PILOTS' RESPONSE IN
OPPOSITION TO PMSA'S MOTION TO
STRIKE REBUTTAL TESTIMONY

1 Pursuant to WAC 480-07-375, Puget Sound Pilots ("PSP") file this Response in Opposition to PMSA's Motion to Strike Rebuttal Testimony ("Motion").

I. INTRODUCTION AND SUMMARY

2 Pacific Merchant Shipping Association's ("PMSA") Motion to Strike is premised on the notion that a rate proponent (the party with the burden of proof) is not permitted to introduce new evidence in the rebuttal phase of testimony because doing so cuts off the intervenors' ability to provide additional new evidence in response to it. PMSA's Motion also surprisingly asserts that a portion of PSP's rebuttal testimony should be stricken as a discovery sanction because PSP failed to produce requested information and noted that the information sought was of no value to the Commission. As is addressed below, PMSA has wholly failed to support these contentions, which are also demonstrably incorrect. Rather than precluding the ability of intervenors to provide "counterbalancing evidence" as PMSA complains, this sequencing is simply a product of the Commission's procedural schedule. PMSA retains the option of addressing rebuttal testimony and evidence in the same manner as PSP is authorized to address cross-answering testimony. The Commission should therefore deny PMSA's Motion.

II. STATEMENT OF ISSUES

1. Whether the proper scope of rebuttal permits new evidence offered in response to the same subject matter on which a party provides response testimony and argument.
2. Whether a party is entitled to the striking of rebuttal testimony as a discovery sanction when the evidence addressed in testimony was never requested in discovery.

III. EVIDENCE RELIED UPON

- 3 In support of its Response, PSP relies upon all prefiled testimony and exhibits submitted in this proceeding, as well as Exhibit 1, the Declaration of George Quick, Exhibit 2, the Declaration of Blair I. Fassburg, Exhibit 3, PSP's response to Staff's Data Request No. 25, and Exhibit 4, Objections and Responses by Pacific Merchant Shipping Association to Puget Sound Pilots' data requests 14, 17 – 28, and 33.

IV. STATEMENT OF FACTS

- 4 Puget Sound Pilots filed its proposed tariff initiating this first ever UTC pilotage rate proceeding on the premise that the current pilotage rates have been and will be insufficient to generate pilot income that will fairly compensate pilots for their labor. Because pilotage rates have never been established by a public utility commission in Washington before, and the sole statutory standard applicable to the Commission in adopting rates is that they must be "fair, just, reasonable, and sufficient"¹ this case presented a clean slate opportunity to establish a ratesetting methodology and revenue requirement formula. However, without precedent by which to guide the parties' evidentiary presentations, all parties were left to devise their own theories and present them through prefiled testimony and exhibits.

¹ RCW 81.116.020(3).

5 PSP built its revenue requirement and supplied its initial testimony and exhibits around basic tenets followed by a large majority of pilotage ratesetting authorities, which determine a revenue requirement predicated upon the funding of expenses, and an amount representing the income to be earned for pilot labor. The latter amount is typically determined by multiplying a number of pilots to be funded and an amount representing fair compensation for each funded pilot’s work. In turn, the value of a pilot’s work is typically established by considering the income earned by pilots in other districts.

6 That ratesetting approach is illustrated by the one used by the Oregon Board of Maritime Pilots (“OBMP”). The OBMP, as a part of the Oregon Public Utility Commission, is one of the few public utility pilotage ratesetting authorities in the United States. And by rule, it considers not only “evidence of compensation for comparable maritime professions, including other state regulated pilotage associations,”² but more specifically the income earned by pilots in the Puget Sound and San Francisco.³ Similarly, the California Harbors and Navigation Code requires that in establishing a recommendation to the legislature (which ultimately must approve rate increases) the Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun should consider among other factors “income paid for comparable services.”⁴

7 Following that widely adopted approach, Puget Sound Pilots submitted in its initial testimony and exhibits information regarding the income earned by state regulated pilots associations as a well as a description of each such pilotage district for the Commission to consider in establishing pilot income.

² OAR 856-030-0000(1)(e).

³ OAR 856-030-0000(2).

⁴ Cal. Harb. & Nav. Code § 1203.

8 On May 27, 2020, PMSA filed response testimony in this proceeding through a total of two witnesses, John Ramirez, and Capt. Michael Moore, and Staff filed response testimony through three witnesses, including Scott Sevall.

A. John Ramirez testimony’s reliance upon BLS statistics

9 PSMA witness John Ramirez offered response testimony regarding what he believed to be an appropriate ratemaking methodology to be applied to pilotage tariffs in Exh. JCR-1Tr. There, he attempted to show the rate of return earned by members of Puget Sound Pilots by creating a balance sheet that included a value of labor for pilots relying upon Bureau of Labor Statistics (“BLS”) data for Captains, Mates and Pilots of Water Vessels.⁵

10 In rebuttal to PMSA’s witnesses, Puget Sound Pilots submitted testimony on July 13, 2020. Among those witnesses, Capt. George Quick offered testimony in response to Mr. Ramirez’s use of BLS data in testifying about his assessment of the revenue requirement methodology, evaluating it in contrast to his knowledge of predominant pilotage ratesetting criteria, including the idea that comparable pilot income should not be based on BLS statistics that include a number of classifications of professional mariners rather than a focus on state-regulated pilots.

B. Scott Sevall’s testimony regarding the usefulness of pilotage district comparisons

11 Staff witness Scott Sevall submitted response testimony offering his opinion regarding the use of the earnings of pilots in other districts in establishing a Distributable Net Income goal in Staff’s proposed revenue requirement. There he argued “the different groups proposed by PSP as comparable are, in fact, so dissimilar as to negate any usefulness as a benchmark for the Puget

⁵ Exh. JCR-1Tr. 10: 3 – 18.

Sound region.”⁶ Mr. Sevall testified further that “[the earnings data for pilots in other state pilotage districts] appear not to be truly comparable on their face. Not only are the communities they serve unique as to cost of living, but the challenges pilots in those districts face in their day-to-day work are not comparable to those faced by Puget Sound pilots.”⁷

12 As addressed in the Declaration of George Quick, Exhibit 1, Capt. Quick was surprised by Mr. Sevall’s rejection of consideration of the income earned by other state-regulated pilots. Capt. Quick believed that Mr. Sevall’s rejection was ill-founded and could be demonstrated to be incorrect. Thus, in rejoinder to that prefiled testimony, Capt. George Quick gathered information to create a chart demonstrating why the differences in geography and the differences between harbor pilots, bar pilots and river pilots can be ignored when establishing rates.⁸ That chart was comprised of information previously produced in response to data requests along with additional information that was never requested in discovery but which Capt. Quick obtained for purposes of his chart.⁹ Capt. Quick then offered rebuttal testimony supported by analysis demonstrating that neither geographical differences nor differences in work assignments are disqualifying factors in considering comparable pilot earnings when establishing a revenue requirement.¹⁰ To establish his point, he compared the total number of pilot assignments, hours spent per assignment, and pilot income earned by other groups to demonstrate the premise that despite the differences in geography and workloads, pilot income for other districts can still be evaluated as a comparator for establishing sufficient net income in a revenue requirement.¹¹

⁶ Exh. SS-1T. 4: 4 – 6.

⁷ *Id.*, 15: 5 – 11.

⁸⁸ Exh. 1.

⁹ *Id.*

¹⁰ Exh. GQ-5T. 8: 1 – 8.

¹¹ *Id.* 10: 17 – 13: 15.

C. Capt. Moore’s testimony regarding the Pilotage Act’s requirements impacting competition for waterborne commerce and the COVID-19 pandemic

13 Capt. Moore’s response testimony advanced PMSA’s position that the Commission must acknowledge the Pilotage Act’s requirements that the Board of Pilotage Commissioners consider Washington’s “position as an able competitor for waterborne commerce from other ports and nations of the world” when adjudicating pilotage tariffs.¹² As a subset of that new subject matter, Captain Moore offered a number of statements regarding the concerns held by ports and the customers of pilotage service that pilotage rate increases would affect Washington’s ability to compete for waterborne commerce, including his unvarnished conclusion that “[pilotage] tariff increases put Washington State ports at a competitive disadvantage.”¹³

14 In response to Capt. Moore’s contentions, PSP presented rebuttal testimony from Dr. Robert Leachman, PhD. There, Dr. Leachman offered an opinion critiquing Capt. Moore’s testimony that an increase in pilotage tariffs negatively impact the competitiveness of Washington’s ports by supplying his own analysis of the “infinitesimally” small impacts on shipping costs PSP’s proposed rates would create.

15 Capt. Moore’s testimony also addressed the COVID-19 pandemic that struck the United States months after PSP submitted its initial testimony in November, 2019, and which PSP obviously had no prior opportunity to address because it had not yet occurred.¹⁴ Capt. Moore described how the pandemic had affected shipping companies, which are restructuring their operations, including cutting spending, reducing budgets, laying off staff and suffering historic losses.¹⁵ In response, Capt. Ivan Carlson offered testimony regarding similar impacts of the COVID-19

¹² Exh. MM-1Tr. 114: 7 – 19.

¹³ *Id.* 123: 9 – 10.

¹⁴ *Id.* 133: 11 – 135: 26.

¹⁵ *Id.* 135: 11 – 16.

pandemic on PSP, including a significant and concerning revenue and income decline, which he established through evidence rather than mere conclusory statements.

D. PMSA offered out-of-sequence testimony, yet complains about appropriate rebuttal simply because the party with the burden of proof has the last procedural word

- 16 In an ironic twist, PMSA perpetrated the same out-of-sequence filing that it erroneously complains of here. Namely, Capt. Moore’s cross-answering testimony included additional testimony responding to PSP’s initial filing rather than answering Staff’s response testimony. There, Capt. Moore claims he is “incorporat[ing] by reference into [his] testimony all facts set forth in the PMSA Motion for Summary Determination.”¹⁶ PMSA’s Motion for Summary Determination addresses PSP’s initial filing, and not Staff’s response prefiled testimony and exhibits. That it is obviously not proper cross-answering testimony because it does not respond to the testimony of the other intervenors.
- 17 Additionally, on July 15, 2020, PMSA sought to file testimony and exhibits supplementing Capt. Moore’s May 27, 2020 submission in this proceeding, without any leave of the Commission, and after the opportunity to respond to such testimony and exhibits in rebuttal had passed.

V. AUTHORITY AND ANALYSIS

A. Rebuttal witnesses are free to address any evidence that responds to the subject matters raised in response

- 18 PSMA asserts that “rebuttal evidence is admissible to allow a response to new material presented by other parties; it should not be treated as an opportunity to present evidence that ought to have been presented in the case-in-chief.”¹⁷ In support of this position, PMSA cites to the rules

¹⁶ Exh. MM-42T. 4: 1 – 6.

¹⁷ PMSA’s Motion. ¶ 21.

regarding the pre-trial disclosure of expert rebuttal testimony set forth Rule 26(a)(2)(D) of the Federal Rules of Civil Procedure and to a single Commission Order.

19 While it is highly ironic that PMSA now relies upon court rules to support its own motion to strike while rejecting the applicability of court rules when defending one,¹⁸ PMSA here also misstates the scope of permissible rebuttal under federal rules. Under the Federal Rules of Civil Procedure, district courts have broad discretion to determine the admissibility of rebuttal evidence.¹⁹ Rebuttal testimony that responds to the same subject matter is permitted even if it is based on new evidence or evidence of a different nature.²⁰ Even so, while it certainly may consider arguments regarding the applicability of the rules of civil procedure, the Commission is not bound to follow arguments based thereon. The Commission adopted its own procedural rules in WAC 480-07 and complies with those additional procedural rules set forth in Part IV of the Administrative Procedure Act. RCW 34.05.

B. Neither Capt. Quick’s discussion of widely accepted pilotage ratemaking criteria nor Capt. Carlson’s discussion of the impacts of COVID-19 represent new subject matters or propose an alternative request for relief in rebuttal.

20 PMSA similarly misstates the Commission’s treatment of new information supplied in rebuttal in its cited Commission order. PMSA asserts that “the Commission has limited the evidentiary record in other proceedings including where the party seeking the tariff revision improperly filed new material as rebuttal testimony.”²¹ But the order it there cites did not simply address new

¹⁸ PMSA’s Response in Opposition to PSP’s Motion to Strike. ¶ 8

¹⁹ *Koseatac v. Rubin*, 4 Fed Appx 84, 86 (2d Cir 2001)(“whether testimony should be allowed on rebuttal is a “matter so clearly within the discretion of the judge ... that we think no more need be said”).

²⁰ See *In re Puda Coal Sec. Inc., Litig.*, 30 F Supp 3d 230, 257 (SDNY 2014), *aff’d sub nom. Querub v. Hong Kong*, 649 Fed Appx 55 (2d Cir 2016)(internal quotation and citation omitted); *Glass Dimensions, Inc. ex rel. Glass Dimensions, Inc. Profit Sharing Plan & Tr. v. State St. Bank & Tr. Co.*, 290 FRD 11, 16 (D Mass 2013).

²¹ PMSA’s Motion. ¶ 21.

evidence offered in rebuttal. Instead, that order addressed an alternate relief request that was presented for the first time on rebuttal:

The Commission has consistently given guidance, over many years, that a utility that does not distribute to other parties its updated background material and work papers in time for the parties to present evidence on a major issue, fails to follow acceptable procedure. This being the Commission's practice, it is even less acceptable for a party to present an alternative request for relief for the first time at the rebuttal stage of a proceeding. It remains today a disfavored practice for a utility to limit other parties' opportunity to examine a proposal by waiting until rebuttal to present it. The Commission expects the company to present its proposals in its direct case.²²

21 It is no surprise that a new rate proposal would not be permitted on rebuttal when there would be no opportunity for response testimony. When the rate proponent submits its proposed tariff, supporting testimony and workpapers, the intervenors are entitled to conduct discovery and provide responsive testimony and evidence. Filing a new proposal in rebuttal would deprive the other parties of due process. Because PSP made no such alternative request for relief, nor has it proposed a new ratesetting methodology in rebuttal, that principle simply does not apply here.

22 In fact, the lone party to which this principle does apply is PMSA, which suggested a new revenue requirement methodology in cross-answering testimony when PSP would have no opportunity to respond. There, PMSA proposed the following, an actual formula by which to adopt a "revenue per assignment" methodology that it never previously proposed:

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

A: Yes, as confirmed at UTC Response to PMSA Data Request No. 9 (Exh. MM-48 at 2), the same Revenue Requirement of TDNI can be achieved by utilization of the terms "'TDNI = (TA * ARPA) – Exp – Dep – Int' where TA = Total Ship Movement Assignments and ARPA = Average Revenue per

²² *WUTC v. Avista Corp.*, Dkts. UE-160228 and UG-160229, Order 04 (Oct. 10, 2016), ¶ 12.

Assignment, and the other expense categories are the same as described at Exh. DPK-1T, p. 7.²³

And PMSA went on to describe the justifications and reasoning it believed should be used to adopt such a novel revenue requirement methodology, all without any opportunity for the party with the burden of proof to rebut that alternative proposal.²⁴

23 Despite this apparent hypocrisy, PMSA seeks to apply and amplify this principle, mischaracterizing Capt. Quick’s rebuttal of Scott Sevall when addressing “generally accepted method of determining pilotage rates” as a “new methodology”²⁵ and a “novel concept that no other party... ever introduced.”²⁶ Nothing could be further from the truth. Capt. Quick did not propose applying a new methodology in considering PSP’s tariff proposal. His rebuttal testimony regarding predominant ratesetting criteria first served as a rejoinder to Mr. Ramirez’s reliance upon BLS statistics, and then in rebuttal to Scott Sevall’s seemingly casual dismissal of an integral component of PSP’s already-proposed ratesetting methodology: the reliance upon comparable pilot district compensation information to establish a benchmark for income in the Puget Sound pilotage district. As addressed by Capt. Quick, the income earned by pilots in other districts is a widely adopted (“nationally accepted”) pilotage ratemaking criterion. Thus, rather than a “novel concept” that was not discussed by any party, the reliance upon benchmarking the sufficiency of pilot compensation by comparing it to other pilotage districts is a direct component of PSP’s proposed ratesetting methodology further supported by Capt. Quick in rebuttal to Mr. Sevall.

²³ Exh. MM-42T. 7: 19 – 26.

²⁴ PMSA’s first proposal for a revenue requirement methodology and discussion supporting its proposal is set forth in the Cross-Answering Testimony of Capt. Michael Moore, Exh. MM-42T. 4: 22 – 18: 5.

²⁵ PMSA’s Motion. ¶ 20.

²⁶ *Id.* ¶ 12.

24 Nor, as PMSA suggests, does Capt. Carlson raise any new rate proposal on rebuttal that would prejudice the intervenors. Capt. Carlson’s financial testimony did not propose a new historic test period²⁷ and rate year, or introduce a new period of financial information (which PMSA did in response testimony) for purposes of evaluating the revenue requirement. Capt. Carlson merely addressed a subject first introduced by PMSA. It was Capt. Moore who raised the specter of the ongoing COVID-19 pandemic and its impacts on the shipping industry, which again, struck months after this rate proceeding was initiated. Capt. Carlson and PSP are thus fully entitled to address in rebuttal the financial impacts on PSP to demonstrate the economic risks assumed by pilots operating in a pilot association. Offered for such purposes, it matters not that the information is unaudited, as is the case for much financial information supplied to the Commission by transportation rate proponents. Nor does it “require extensive recalculation of previously submitted testimony” as PMSA alleges.²⁸ No party has proposed using an updated test or rate year in this proceeding and indeed one of PSP expert witnesses recommended against reacting to the pandemic’s debilitating fiscal effects by attempting to normalize this extraordinary occurrence.²⁹ In short, these latest PMSA arguments are nothing more than a transparent attempt by an intervenor to control the evidentiary presentation of the party with the burden of proof.

25 Were it to be accepted, PMSA’s narrow, self-serving interpretation of the scope of rebuttal would also hinder the Commission’s ability to fairly adjudicate any proceeding. Yet as PMSA argued,³⁰ and indeed, the Commission has just acknowledged, in this first pilotage rate

²⁷ Which was supported by *actual* financial data and not *projected* data for January 1 – June 30, 2019 as PMSA mistakenly claims.

²⁸ PMSA’s Motion. ¶ 24.

²⁹ SK-3T. 14: 12-20.

³⁰ PMSA’s Response in Opposition to PSP’s Motion to Strike. ¶ 7.

proceeding ” any evidence that may assist [it] in [its] evaluation should be admitted and accorded weight based on its relevance and reliability.”³¹ PMSA’s subsequent Motion to Strike ignores that directive. The Commission also there acknowledged the opportunity for rebuttal of the wide-ranging topics discussed in response testimony.³² Thus, the Commission has an even greater interest in hearing rebuttal evidence here.

C. Dr. Leachman’s testimony falls squarely within the scope of rebuttal of the port competitiveness testimony of Capt. Moore

26 When appropriately limited to the same subject matters raised or discussed in response to new evidence in rebuttal, testimony should be and typically is permitted regardless of whether it is evidence of the same character offered in response³³ To limit the scope of evidence otherwise would permit intervenors to control how their testimony is rebutted by selectively limiting the types of evidence used to support response testimony, or by offering conclusory opinions without support, and then moving to strike any effective rebuttal that relied upon new information or analyses to demonstrate the fallacy of the response. Such a practice would effectively provide the responding party a “veto power” over what evidence its opponent may offer, or the Commission may consider, in rebuttal.³⁴

27 PMSA’s attempt to exclude the rebuttal testimony of Dr. Leachman perfectly illustrates such an impermissible tactic: Capt. Moore’s complaint that he could not *respond* to a market impact study because none was submitted in PSP’s initial testimony is nothing more than an attempt to

³¹ Order 06. ¶ 8.

³² *Id.* ¶¶ 16, 22.

³³ This is particularly true in this case of first impression considering that the Commission has never before been afforded an opportunity to adopt a ratesetting methodology by which the parties’ future evidentiary presentations will be guided.

³⁴ *See, e.g., Puda*, 30 F Supp 3d 230 (explaining that gamesmanship by the responding party should not preclude a new analysis or evidence offered in rebuttal on the same subject matter because it would permit the responding party a veto power over the rebuttal presentation).

veto the proffer of such a study on rebuttal. So too is PMSA's claim that Dr. Leachman should not be permitted to analyze the impacts on shipping demands from the perspective of beneficial cargo owners because PMSA relied upon evidence on the same subject matter but of a different character when it analyzed the concerns from the vantage point of pilotage customers.³⁵

28 It was PMSA who raised the subject of the Pilotage Act and the impacts of pilotage rate increases on the competitive position of Washington's ports, not PSP. And it is the intervenors, not PSP, who carry the burden of proof to show whether the rates PSP proposes are so high as to effectively act as an embargo.

29 The Pilotage Act does not limit or authorize the Commission's ratemaking authority. That authority is set forth in RCW 81.116, not RCW 88.16, and is not incorporated by reference there. Because there are no legal criteria requiring the Commission to consider that information, there was no reason for PSP to submit evidence relating to port competitiveness in its initial testimony. It should be no surprise then to PMSA and Capt. Moore that PSP did not include a market impact study in its initial testimony as they noted in their testimony. And had PMSA desired to sponsor such a study to support its burden of proof, rather than merely react to one, it was free to do so.

30 Indeed, Capt. Moore contends repeatedly in his response testimony that increasing pilot tariffs will harm the ports' ability to compete for containerized cargo traffic. On that topic, he initially quotes the ports as opining:

We believe there is sufficient revenue being generated for safe and reliable pilotage and that any cost increases would further impact the competitive position of our region.³⁶

³⁵ PMSA's Motion. ¶ 11.

³⁶ Exh. MM-1Tr. p. 121: 20 – 22.

He then offers the sweeping statement that “tariff increases put Washington State ports at a competitive disadvantage”³⁷ without any evidence to support the impact of pilotage tariffs on the TEUs of containerized cargo by which PMSA measures port market share.³⁸ If this premise were in fact valid, PMSA could have elected to support it with analysis demonstrating the impacts of pilotage rates on shipping demand. Its choice not to do so should not preclude a highly qualified expert to supply rebuttal evidence demonstrating that premise to be incorrect, regardless of whether the rebuttal testimony relied upon the same, conclusory types of evidence Capt. Moore presented in his testimony.

D. Capt. Quick’s testimony addresses workload arguments addressed by Capt. Moore and Scott Sevall’s rejection of the ability to compare pilot incomes

31 PMSA further seeks to strike rebuttal testimony offered by Capt. Quick in response to staff witness Scott Sevall based on the premise that parties are not permitted to introduce new evidence to rebut evidence in the response phase if they could have introduced that evidence earlier. On this point, PMSA’s actions directly contradict its own words. In the cross-answering testimony of Capt. Michael Moore, Exh. MM-42T. 23: 16 – 25: 13, he actually offers a new analysis relying upon new exhibits, MM-43 through MM-49, to address the workload of PSP’s Vice President at a point when PSP has no opportunity to respond. Thus, PMSA apparently believes that parties are permitted to offer new analyses and supporting evidence in the rebuttal/cross-answering phase when offered as a rejoinder to a position taken by a party in the response phase.

32 As addressed above, Mr. Sevall testified that he rejected any notion of considering the net income earned by pilots in other pilotage districts because he believed the other districts to be

³⁷ Exh. MM-1Tr. 123: 8 – 10.

³⁸ Exh. MM-1Tr. 116: 13 – 120: 15.

incomparable “on their face” due to differences between geography, and his perception of the distinctions among bar pilots, river pilots, and harbor pilots. When an intervenor takes a position in response testimony that can be shown to be flawed, such as claiming that a particular analysis cannot be performed, or asserting pilotage districts are incomparable on their face, it is perfectly appropriate to perform analysis of new evidence in rebuttal to demonstrate that premise is inaccurate.

33 Indeed, the Commission has authorized new analyses even in rebuttal-phase testimony when offered to demonstrate the fallacy of a premise previously offered by a party in the response phase.³⁹ Here, Capt. Quick has done nothing more than that. By performing a workload comparison, Captain Quick demonstrated that it is certainly possible to consider the incomes of pilots in other districts despite the differences among the various types of pilots. When considering how their total workloads compare, it becomes apparent that those differences are simply a matter of assignment types, numbers, and distances, and the differences in geography do not prevent reliance upon their income information in establishing a DNI goal. Capt. Quick was merely seeking to prove Mr. Sevall’s premise incorrect. Consequently, that testimony falls squarely within the scope of allowable rebuttal.

E. PMSA mischaracterizes the discovery directed to Capt. Quick and cannot demonstrate any discovery deficiencies for which sanctions could be conceivably authorized

34 As noted above, PMSA further seeks Capt. Quick’s rebuttal testimony to be stricken as a discovery sanction. Yet PMSA’s Motion ignores a fairly basic requirement of discovery

³⁹ *WUTC v. Pac. Power & Light Co.*, Dkt. UE-152253, Order 11 (May 26, 2016). ¶ 13.

sanctions: for sanctions to be available if at all, the information at issue must have been requested.

35 In order to justify its efforts to preclude PSP from rebutting Mr. Sevall’s treatment of pilot income information, PMSA once again blatantly mischaracterizes his testimony regarding predominant or “national” ratesetting criteria as “pilot income information.”⁴⁰ PMSA then fashions the discovery that was sought from PSP and Capt. Quick, the discovery that was produced, and the objections made to data requests by PSP all to suggest that Capt. Quick and PSP concealed information that had been sought in discovery. A closer review of the actual data requests served demonstrates that PMSA is here attempting to re-write history to make it appear it had requested information it did not.

36 For example, PMSA claims in its Motion that both PMSA and Staff sought workload information from Capt. Quick:

Here both the Staff and PMSA asked for variations of the same information regarding the claims made by Capt. Quick in his direct testimony that he held a repository of national data about average pilot compensation and workload.⁴¹

...

The chart contains precisely the type of pilot workload and compensation information the parties sought in discovery—information that the Commission would, according to PSP’s discovery, find of no value—though Capt. Quick’s rebuttal testimony has now asserted it would “assist” in deliberations.⁴²

PMSA also asserts that “a national ratesetting methodology” would have been responsive to Staff and PMSA’s data requests:

⁴⁰ PMSA’s Motion, ¶ 14 (“In response to a discovery request from Staff for the basis for Capt. Quick’s statements regarding the setting of pilot “income ranges nationally,” PSP did not claim that any national ratesetting methodology existed.”)

⁴¹ *Id.* ¶ 27 (emphasis added).

⁴² *Id.* ¶ 29.

More specifically, when Staff requested the basis for Capt. Quick’s statements regarding income ranges nationally, he should have disclosed at that point that there was, in his opinion, a national ratesetting methodology.⁴³

...

When PMSA requested documents reflecting data and feedback from pilot associations as to pilot compensation and workload, PSP should have disclosed the existence of a national ratesetting methodology.⁴⁴

Yet, the actual data requests served demonstrate that neither workload information nor ratesetting methodologies were requested by either Staff or PMSA.

37 Chronologically, the first relevant data request was served by Commission Staff and sought studies, workpapers, articles or publications that support “pilot income ranges nationally” which information was produced by Capt. Quick:

UTC STAFF DATA REQUEST NO. 11:

Captain Quick testifies at page 16, lines 4-5 that “...[pilot] income ranges nationally in the area of \$550,000 to 600,000 per year.” Please provide any studies, workpapers, articles or publications that support, in whole or in part, his statement.⁴⁵

38 Next, in a request to PSP conveniently omitted by PMSA, Staff sought from Capt. Carlson the source information for the pilot income information supplied in Exhibit IC-3, which was produced to all parties on February 3, 2020.

UTC STAFF DATA REQUEST NO. 25:

Referring to Exhibit IC-03, Captain Ivan Carlson

In your testimony you provide exhibit IC-03 summarizing comparable net income of maritime pilots in other districts. Please provide source documents, studies,

⁴³ *Id.* ¶ 27.

⁴⁴ *Id.*

⁴⁵ Exhibit A to PMSA’s Motion (emphasis added).

articles or publications or any other document that support this exhibit including any associated work papers.⁴⁶

39 Then, in PMSA Data Request No. 47, it requested from Capt. Quick “a list of all pilot associations with whose [sic] pilot compensation levels [he] has become familiar, as referenced at Exh. GQ-1T p. 11 line 3.”⁴⁷ Capt. Quick responded by providing the list requested.

40 In PMSA Data Request No. 47, one of PMSA’s many cumulative and burdensome requests seeking stale information, PMSA similarly sought pilot income information, requesting:

PMSA DATA REQUEST NO. 47: Please provide copies of all documents showing data for the years 2010 to present of the pilot compensation levels related to your response to Request No. 46.⁴⁸

41 Finally, in its 48th Data Request, PMSA sought copies of documents supporting Capt. Quick’s initial testimony regarding his statements addressing “feedback [he received] from various pilot associations around the country as to the basic outlines of their compensation”:

PMSA DATA REQUEST NO. 48: Please provide copies of all documents reflecting the “feedback from various pilot associations around the country as to basic outlines of their compensation including particular pension plans or retirement programs and working conditions,” as referenced at Exh. GQ-1T p. 1 lines 18-20.⁴⁹

42 PSP duly produced the income information available to it when requested, and PMSA chose not to address the income earned by pilots outside of the Puget Sound Pilotage district in response. Thus, if credulity is strained here, it is by PMSA’s claims that Capt. Quick and PSP refused to produce information or that PMSA is somehow denied an opportunity to respond. Nowhere in these requests did PMSA seek information from Capt. Quick or PSP regarding ratesetting methodologies or pilot workload information available from public record documents. PMSA’s

⁴⁶ See Exhibit 3, PSP’s Response to Staff Data Request No. 25.

⁴⁷ Exhibit B to PMSA’s Motion (emphasis added).

⁴⁸ *Id.*

⁴⁹ *Id.* (emphasis added).

brazen pursuit of discovery sanctions as a consequence for failing to produce what was never requested is astounding.

43 Similarly objectionable is PMSA's claim that PSP asserted that information regarding pilot income and workload were of no value to the Commission. In its Motion, PMSA asserted:

The chart contains precisely the type of pilot workload and compensation information the parties sought in discovery—information that the Commission would, according to PSP's discovery, find of no value—though Capt. Quick's rebuttal testimony has now asserted it would “assist” in deliberations.⁵⁰

PMSA once more selectively and disingenuously parses questions and answers here. Again, pilot workload information was not requested by PMSA in discovery, as its own exhibits on Motion demonstrate. More to the point, PSP did not object that *all* income information was of no value to the Commission as PMSA maintains. PSP had already produced all of the responsive and current pilot net income information it knew to exist in response to Staff's earlier data request. Instead, as PMSA's own exhibits once again demonstrate, PSP objected to the breadth of PMSA's request. Just as many of its data requests did (and many were in fact far worse), PMSA sought information spanning an entire decade to which PSP duly objected:

Objection. This request is overly broad and is not properly limited in time. Specifically, documentation of historic and annual pilot compensation levels from 2010 to present would be unreasonably cumulative and duplicative, not to mention voluminous and are not beneficial to the adjudication of this proceeding; stale pilot income data from 2010 have no relevance to a 2020 rate proceeding. PSP has produced the only known publicly available information on state pilot compensation for comparable pilotage groups for the pertinent test year or best current available information in its filing in November and in responses to data requests. This request is therefore also unreasonably cumulative of other requests, in violation of WAC 480-07-400(3).

⁵⁰ PMSA Motion. ¶ 29

44 Similarly apocryphal is PMSA's assertion that Capt. Quick now opines that the information PSP objected to producing, stale, (i.e. as much as decade-old), income information will assist the Commission. No such statement about that vintage of information assisting the Commission exists in his testimony.

45 Finally, PMSA apparently complains that Capt. Quick refused to reduce information available to him in response to a data request, but was willing to do so for his rebuttal testimony. But once again, PMSA mischaracterizes events. Here, Capt. Quick was asked to "provide copies of all documents" reflecting the feedback he received from various pilot groups "as referenced at Exh. GQ-1T p. 1 lines 18-20."⁵¹ That request can only be fairly characterized as one for him to produce any documents that support his testimony, not provide an unduly burdensome narrative summarizing all of his knowledge on a topic. And Commission rules clearly do not require Capt. Quick to create a new document as PMSA suggests. WAC 480-07-400(1)(c)(iii) provides "The commission otherwise will not order a party to respond to a data request that would require creation of new data or documents unless there is a compelling need for such information."

46 Notwithstanding the fact that the workload information relied upon to compile the chart was not requested in discovery, the only information relied upon by Capt. Quick that had not already been produced in response to Staff DRs 11 and 25 was information he obtained from third parties shortly before creating his chart for his rebuttal testimony.⁵²

47 PMSA cannot complain that PSP and Capt. Quick did not obtain and produce information from third parties earlier, as they had no obligation to do so. Moreover, when PSP itself sought information regarding pilot net income, assignments worked, and the work schedule of other

⁵¹ PMSA DR 48, Exh. 3.

⁵² See Exhibit 1, Declaration of Capt. Quick.

pilots from PMSA, it refused to produce any such information, objecting that it was irrelevant and equally available from third parties:

PSP DATA REQUEST NO. 33:

For each state pilotage district on the west coast, state the number of annual assignments per pilot relied upon by the respective rate-setting authority for establishing pilotage rates in 2017 - 2019.

PMSA RESPONSE TO PSP DATA REQUEST NO. 33:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020 [sic], pursuant to WUTC Order 04 (TP-190976, March 31, 2020).⁵³

Thus, had PMSA believed pilot assignment information necessary for its response, it could apparently have obtained it from third parties as it referenced in its DR response and then proffered it as conditionally promised above in its May 27 Responsive testimony.

48 As is now demonstrated, PMSA's request for sanctions is predicated on complete mischaracterizations of testimony, data requests, and objections that cannot withstand even modest scrutiny.

VI. CONCLUSION/PRAAYER FOR RELIEF

49 PMSA's Motion asserts repeatedly that by permitting new evidence in rebuttal it has been deprived of the opportunity to respond with additional evidence of its own which cannot be cured by being authorized sur-rebuttal. However, PMSA's real, albeit belated objection, is actually to the Commission's procedural schedule as set forth specifically here in the prehearing conference order and Order 04 on which PMSA did not seek review, and which authorizes

⁵³ See Exhibit 4, PMSA's Responses to PSP Data Requests 8, 9, 14, 17 – 28, 33.

rebuttal testimony only for the rate proponent, and requires critiques of rebuttal testimony and cross-answering testimony alike to be addressed through discovery and cross examination.⁵⁴

PMSA may yet again want the last bite at the apple, but no remedy should be permitted for what is hardly a defect, but ultimately an orderly procedural process for appropriately sequencing a general rate case. PMSA's Motion to Strike should be denied in full.

DATED this 29th day of July, 2020.

RESPECTFULLY SUBMITTED,

By s/ Blair I. Fassburg
Blair I. Fassburg, WSBA # 41207
bfassburg@williamskastner.com
David W. Wiley, WSBA #08614
dwiley@williamskastner.com
Williams Kastner & Gibbs, PLLC
601 Union St, Ste 4100
Seattle, WA 98101
206-628-6600

Attorneys for Puget Sound Pilots

⁵⁴ *WUTC v. Pac. Power & Light Co.*, Dkt. UE-152253, Order 11 (May 26, 2016), ¶ 14.

EXHIBIT 1

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,
Complainant,

v.

PUGET SOUND PILOTS,
Respondent.

Docket TP-190976

DECLARATION OF CAPT. GEORGE
QUICK IN SUPPORT OF PUGET SOUND
PILOTS' RESPONSE IN OPPOSITION TO
PMSA'S MOTION TO STRIKE

I, Capt. George Quick, declare as follows:

1. My name is George Quick and offer this declaration in support of Puget Sound Pilots' Response to Pacific Merchant Shipping Association's Motion to Strike portions of my rebuttal testimony. This declaration is based upon my personal knowledge.
2. In my initial testimony supporting Puget Sound Pilots' tariff proposal I supplied testimony regarding the average income level earned by pilots around the nation and Capt. Ivan Carlson supplied testimony and an exhibit with publicly available state pilot income information. This is the type of information typically relied upon by many pilot ratesetting agencies which consider the income earned by pilots in other pilotage districts without an in-depth analysis of the workload of pilots or any demonstration that a particular pilotage district is geographically comparable to another.
3. For example, in establishing pilotage tariffs for Oregon pilotage districts, the Oregon Board of Maritime Pilots considers by OAR 856-030-0000(1)(e) "evidence of compensation for comparable maritime professions, including other state regulated pilotage associations." The Board specifically requires consideration of the income earned by pilots in San Francisco and the Puget Sound in OAR 856-030-0000(2). A number of states follow similar standards in establishing rates, including Florida, Virginia and Maryland.

DECLARATION OF CAPT. GEORGE QUICK-1-

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

4. I was surprised then to see that in Exhibit SS-1T, Mr. Scott Sevall rejected any consideration of the income earned by pilots set forth in Capt. Carlson's Exhibit IC-3 and discussed in Capt. von Brandenfels' testimony as "not comparable on their face." I believe that his position was flawed, and could be demonstrated to be incorrect through a comparison of the pilots' workload, which should not be necessary to accept the comparability of pilot income, but helps demonstrate its relevance.
5. As I began to prepare my rebuttal testimony in early July 2020, I decided to create a chart of pilot income, pilot assignments, and average work hours and dollars earned per hour of work in order to attempt to demonstrate that Mr. Sevall was incorrect that pilotage districts with varying geography or that harbor pilots, bar pilots, and river pilots cannot be comparators for purposes of reliance upon their net income as a criterion for establishing pilotage tariff rates.
6. The pilot income information I relied upon in the chart primarily was sourced from information which had already been produced in discovery. I produced information in response to Staff Data Request 11, where I had the supporting documentation called for in the DR for the Crescent River Port Pilots Association in Louisiana, and a report and final order establishing the income of the Port Everglades Pilots in Florida in 2019. Capt. Carlson also produced state pilot income information that PSP had obtained from various pilotage ratesetting agencies in response to Staff Data Request No. 25, providing income information for each of the pilot groups he identified in Exh. IC-3.
7. All other information that I relied upon I obtained shortly before I completed the chart.
8. For example, I learned that earlier this month on July 2, 2020, the Crescent River Port Pilots Association filed a rate proceeding with the Louisiana Pilotage Fee Commission containing workloads of the Louisiana pilots and obtained it from the Louisiana Fee Commission website in order to complete my comparison.

DECLARATION OF CAPT. GEORGE QUICK-2-

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

9. I then obtained information regarding the workloads of the Florida pilots to add to my chart. Workload information for the San Francisco Bar Pilots was received through a report to the California Legislature and a personal phone call that took place in early July. The only remaining information for the chart, the assignment numbers and average time on task per assignment for the Columbia River Pilots was supplied on July 11, 2020 so that I could complete my written testimony.

THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE
UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF
MARYLAND.

SIGNED this 29th day of July, 2020, at Jarrettsville, Maryland.

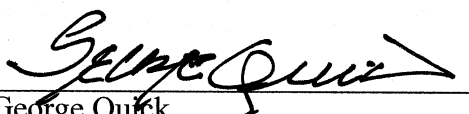

George Quick

EXHIBIT 2

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,
Complainant,

v.

PUGET SOUND PILOTS,
Respondent.

Docket TP-190976


DECLARATION OF BLAIR FASSBURG IN
SUPPORT OF PUGET SOUND PILOTS'
RESPONSE IN OPPOSITION TO PMSA'S
MOTION TO STRIKE

I, Blair I. Fassburg, declare as follows:

1. My name is Blair I. Fassburg and offer this declaration in support of Puget Sound Pilots' Response to Pacific Merchant Shipping Association's Motion to Strike ("PMSA's Motion"). This declaration is based upon my personal knowledge.
2. Exhibit 3 to Puget Sound Pilots' Response in Opposition to PMSA's Motion is a true and correct copy of PSP's response to Staff's Data Request No. 25, served to all parties on February 3, 2020.
3. Exhibit 4 to PSP's Response to PMSA's Motion are true and correct copies of objections and responses served by Pacific Merchant Shipping Association to Puget Sound Pilots' data requests 14, 17 – 28, and 33 to PMSA, served on April 25, 2020.

THE FOREGOING IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE
UNDER PENALTY OF PERJURY UNDER THE LAWS OF WASHINGTON.

SIGNED this 29th day of July, 2020, at Redmond, Washington.


Blair I. Fassburg

DECLARATION OF BLAIR I. FASSBURG-1-

Williams, Kastner & Gibbs PLLC
601 Union Street, Suite 4100
Seattle, Washington 98101-2380
(206) 628-6600

EXHIBIT 3

February 3, 2020

24498.0107

VIA E-MAIL s.brown@utc.wa.gov

Ms. Sally Brown
Senior Assistant Attorney General
Office of the Attorney General
Utilities and Transportation Division
P.O. Box 40128, Olympia, WA 98504-0128

Re: Docket No. TP-190976; Puget Sound Pilots' Responses to Second UTC Staff Data Requests

Dear Ms. Brown:

Enclosed please find Puget Sound Pilots' Responses to UTC Staff Data Request Nos. 17-25 with attachments. These Responses are being served via LiquidFiles.

Please feel free to contact me if you have any questions on this matter.

Yours truly,

Williams, Kastner & Gibbs PLLC

s/ David W. Wiley

David W. Wiley
(206) 628-2772
dwiley@williamskastner.com

Enclosures

cc: Harry Fukano (harry.fukano@utc.wa.gov),
Betsy DeMarco (betsy.demarco@utc.wa.gov),
Krista Gross (krista.gross@utc.wa.gov)
Michelle DeLappe (michelle.delappe@foster.com)
Monique Webber (monique@pacificyachtmanagement.com)

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION STAFF
PUGET SOUND PILOTS RESPONSES TO STAFF DATA REQUESTS NOS. 17 - 25

DATE PREPARED: February 3, 2020	WITNESS: Captain Ivan Carlson
DOCKET: TP-190976	RESPONDER: Captain Ivan Carlson
REQUESTER: Scott Sevall	Puget Sound Pilots

**UTC STAFF DATA REQUEST NO. 25:
Referring to Exhibit IC-03, Captain Ivan Carlson**

In your testimony you provide exhibit IC-03 summarizing comparable net income of maritime pilots in other districts. Please provide source documents, studies, articles or publications or any other document that support this exhibit including any associated work papers.

RESPONSE TO DATA REQUEST NO. 25:

Please find attached documents with the following file labels:

2018 SFBP Audited Financial Statements.pdf
 SFBP 2018 net income worksheet.xlsx
 COLRIP 2018 Financial Statement.pdf
 COLRIP 2018 net income worksheet.xlsx
 CRPPA – 2018 Audited Financial Report (Filed July 2019).pdf
 FINAL – CRPPA 2019 True-Up Filing.pdf
 Crescent Pilots_2.15.2019.pdf
 Crescent River 2018 net income worksheet.xlsx
 NOBRA 2018 Audited Financial Statements(filed 7.1.2019).pdf
 NOBRA Expense True-Up Filing.pdf
 NOBRA Pilot 1099 Report_Year end 2018.pdf
 NOBRA 2018 net income worksheet.xlsx
 LCP Audited FS(filed 7.1.2019).pdf
 LCPI 2020 True-Up Filing Nov. 1, 2019.pdf
 Lake Charles 2018 net income worksheet.xlsx
 Port Everglades 2018 10 15 Investigative Committee Report.pdf
 2019 05 23 Port Everglades Pilots Association – FINAL ORDER.pdf
 Corpus Christi – Rivera v. Kirby Corp
 Corpus Christi – Port Aransas.xlsx.pdf
 Bar Pilots Audited Financials Filing (7-1-19).pdf
 Bar Pilots_2.15.2019_2018 Annual Report.pdf
 Associated Branch 2018 net income worksheet.xlsx
 Columbia River Bar Pilots 2018 Financial Statement.pdf
 Columbia River Bar Pilots 2018 net income worksheet.xlsx

EXHIBIT 4



1111 Third Avenue
Suite 3000
Seattle, WA 98101

Main: 206.447.4400
Fax: 206.447.9700
foster.com

Direct Phone 206.816.1381
wes.freese@foster.com

April 15, 2020

VIA Electronic Mail Only

David W. Wiley
Blair I. Fassburg
Williams Kastner
601 Union Street, Suite 4100
Seattle, WA 98101
dwiley@williamskastner.com
bfassburg@williamskastner.com
president@pspilots.org

RE: *Washington Utilities and Transportation Comm'n v. Puget Sound Pilots*, Docket TP-190976
Pacific Merchant Shipping Association's Responses to Puget Sound Pilots' DRs 1-42

Dear Counsel:

Enclosed please find Pacific Merchant Shipping Association's Responses to PSP's Data Request Nos. 1-42.

Additional documents with Bates numbers PMSA_000001 through PMSA_000544 are available for download on our Sharefile site.

Sincerely,

/s/ Wes Freese

Wes Freese, Paralegal

cc: Sally Brown, Harry Fukano, Monique Webber (*via electronic service*)

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 14:

Produce any and all records establishing, supporting, documenting or summarizing the annual net income and benefits earned by state pilots in any pilotage district in the United States for the years 2015 to the present. Records sought by this request include, but are not limited to the following: financial statements, contracts, expert reports, reports of public agencies, and administrative orders.

PMSA RESPONSE TO PSP DATA REQUEST NO. 14:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 17:

Identify each state pilotage district that PMSA contends is comparable to the Puget Sound pilotage district.

PMSA RESPONSE TO PSP DATA REQUEST NO. 17:

Objection: Untimely; overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; irrelevant; vague and ambiguous as to the term “comparable.”

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 18:

For each state pilotage district that PMSA contends is comparable to the Puget Sound pilotage district, identify each factor upon which the comparison is based and explain how the two districts are comparable.

PMSA RESPONSE TO PSP DATA REQUEST NO. 18:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant; vague and ambiguous as to the term “comparable.”

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 19:

Identify each west coast state pilotage district [*sic*] that PMSA contends is not comparable to the Puget Sound pilotage district.

PMSA RESPONSE TO PSP DATA REQUEST NO. 19:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant; vague and ambiguous as to the term “comparable.”

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 20:

For each west coast state pilotage district that PMSA contends is not comparable to the Puget Sound pilotage district, identify each factor upon which the comparison is based and explain how the two districts are not comparable.

PMSA RESPONSE TO PSP DATA REQUEST NO. 20:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant; vague and ambiguous as to the term “comparable.”

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 21:

Produce all reports, compilations, studies, publications, memos, or other similar documents which purport to make a comparison between any state pilotage district to the Puget Sound pilotage district based upon differences or similarities in the navigational skills required to perform pilotage services in the district.

PMSA RESPONSE TO PSP DATA REQUEST NO. 21:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 22:

Produce any calculation, summary, compilation, or report that compares pilot net revenue, income and/or benefits among state pilotage districts in the United States.

PMSA RESPONSE TO PSP DATA REQUEST NO. 22:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 23:

For each pilotage district to be relied upon in PMSA's response testimony to compare or contrast the net income earned by pilots in that district to that earned by and/or proposed by PSP, produce the following information (or state the information requested where a narrative response is called for) for the years 2016 to present:

(a) All financial statements, compilations or other records relating to the gross revenue in the pilotage district, expenses incurred in the district and net revenue;

(b) Documents or records establishing or documenting the number of pilots licensed and/or working in the district;

(c) Documents or records establishing the average net income per pilot and/or actual income per pilot;

(d) Documents or records reflecting the total annual number of assignments performed in the pilotage district;

(e) Documents or records establishing or demonstrating the number and work schedule of pilots performing administrative duties instead of or in addition to vessel movements;

(f) Documents or records to establish the number of callback jobs performed annually;
and

(g) State whether pilotage service is performed by pilots (or pilot-owned companies) who are members of pilot association.

PMSA RESPONSE TO PSP DATA REQUEST NO. 23:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 24:

Produce all documents reflecting or establishing any ratesetting methodology or other ratesetting principle relied upon by a state or government agency to establish pilotage tariff rates that considers as a factor the return on equity and/or return on investment of pilot association members.

PMSA RESPONSE TO PSP DATA REQUEST NO. 24:

Objection: Untimely; seeks production of information and documentation equally available to PSP from third-party sources; irrelevant; not reasonably calculated to lead to admissible evidence.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 25:

Produce all documents describing, demonstrating or otherwise supplying the watch schedule used by each state pilot association on the west coast.

PMSA RESPONSE TO PSP DATA REQUEST NO. 25:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

Subject to and without waiving said objections, PMSA answers as follows:

PMSA has no responsive documents. In addition, PMSA notes that access to the actual pilot assignment data is not always granted to the public and that other state pilot associations may object to the disclosure of their watch keeping records. See *Board of Pilot Commissioners v. Sup. Ct.*, 218 Cal.App.4th 577 (2013), which held in part that the Port Agent of the Board of Pilot Commissioners was a state official but that specified pilot assignment and dispatch data was not required to be disclosed to the public under the California Public Records Act.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 26:

Identify each west coast state pilotage district in which pilots do not follow a schedule that provides one day of respite for each duty day.

PMSA RESPONSE TO PSP DATA REQUEST NO. 26:

Objection: Untimely; seeks production of information and documentation equally available to PSP from third-party sources; irrelevant; not reasonably calculated to lead to admissible evidence.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 27:

Identify each west coast state pilotage district in which pilots follow a schedule that provides one day of respite for each duty day.

PMSA RESPONSE TO PSP DATA REQUEST NO. 27:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 28:

For each state pilotage identified by PMSA in response to the immediately preceding data request, state whether the vessel traffic in the pilotage district has any surges or traffic peaks: (1) on a daily, (2) on a weekly basis; (3) on a monthly basis; or (4) on a seasonal basis.

PMSA RESPONSE TO PSP DATA REQUEST NO. 28:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.

PACIFIC MERCHANT SHIPPING ASSOCIATION
RESPONSES AS OF 04-15-2020
TO DATA REQUESTS No. 1 – 42 of PUGET SOUND PILOTS

PSP DATA REQUEST NO. 33:

For each state pilotage district on the west coast, state the number of annual assignments per pilot relied upon by the respective rate-setting authority for establishing pilotage rates in 2017 - 2019.

PMSA RESPONSE TO PSP DATA REQUEST NO. 33:

Objection: Overly broad; unduly burdensome; not reasonably calculated to lead to admissible evidence; seeks production of information and documentation equally available to PSP from third-party sources; untimely; irrelevant.

PMSA objects to this Data Request as untimely and premature. PMSA is required to provide, and will provide, all testimony and exhibits as required by May 23, 2020, pursuant to WUTC Order 04 (TP-190976, March 31, 2020).

PMSA further objects to this Data Request as seeking information that is irrelevant to any fact that would assist the UTC determine that the current Tariff is unfair, unjust, and unreasonable.