

PUGET SOUND PILOTS' RESPONSES TO PMSA DATA REQUESTS Nos. 615-658

DATE PREPARED: March 15, 2023 DOCKET: TP-220513 REQUESTER: Pacific Merchant Shipping Association ("PMSA")	WITNESSES: IVAN CARLSON RESPONDER: IVAN CARLSON PUGET SOUND PILOTS DATE: March 22, 2023 TEL: (360) 421-0583 EMAIL: <a href="mailto:president@pspilots.org">president@pspilots.org</a>
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**PMSA DATA REQUEST NO. 615:** Regarding the use in Exh. IC-08T at 4:1–2 of the term “pilot days,” please provide responses to all of the following:

- (a) Define “pilot days.”
- (b) Explain with specificity whether “pilot days” are equivalent to other “on watch” or “duty days” or any other metric.
- (c) Please identify any other testimony PSP has submitted in this case that utilizes the term “pilot days.”
- (d) Please identify any other testimony PSP has submitted in this case which measures “pilot days.”
- (e) Do total “pilot days” include days that pilots are available to pilot while on-watch only? Or do “pilot days” also include days that pilots are not on-watch? Please explain your answer.
- (f) How many “pilot days” did PSP licensed pilots have in June 2022? Please detail your calculation.

**RESPONSE:**

- (a) A day is 24 hours.
- (b) A pilot day could be on watch or off watch.
- (c) None to the best of my knowledge.
- (d) See response to DR 615(c).
- (e) See responses to DR 615(b) and (c).
- (f) 1,446.

**PMSA DATA REQUEST NO. 616:** Regarding Exh. IC-08T 4:1–2, “PSP also lost 114 pilot days due to fitness or Covid in June 2022,” please provide all of the following:

- (a) Did PSP adopt specific rules or protocols for Covid-related “not fit for duty” illness? If so, please provide copies of these rules or protocols.
- (b) If new rules or protocols for Covid were adopted, please describe PSP’s methodology for tracking “Covid.”
- (c) Please provide the basis for the distinction under PSP by-laws or operating rules, if any, between “fitness or Covid.”
- (d) Please provide statistics for June 2022 “Covid” cases exclusive of non-Covid related “fitness.” If PSP did not maintain such statistics, please describe how PSP tracked Covid-related “not fit for duty” illness.

**RESPONSE:**

- (a) No.
- (b) Not applicable.
- (c) Covid is not mentioned either in PSP’s Bylaws or Operating Rules
- (d) See page 60 of Exh-IC-10.

**PMSA DATA REQUEST NO. 623:** Regarding Exh. IC-08T 5:9–11, admit that when licensed pilots perform fewer callback assignments that they make themselves less available to perform pilotage assignments. If denied, please explain the basis for your denial.

**RESPONSE:**

Admit.

**PMSA DATA REQUEST NO. 626:** Regarding Exh. IC-08T 5:20–6:3, regarding WAC 363-116-081, please respond to all of the following:

- (a) Admit that in 2015, PSP adopted rest policies that established an 8-hour rest requirement and “three-and-out.”
- (b) Admit that 2018 BPC policies and 2019 legislation adopted fatigue rules that imposed the 10-hour rule in order to obtain 8 hours rest, a 13-hour limit on multiple harbor shifts, and “three-and-out.”
- (c) Admit that the adoption of WAC 363-116-081 in 2021 was a new rule adopted by the BPC which codified that pilots have a mandatory rest period of at least 10 hours in order to provide pilots with the opportunity for 8 hours of rest and codified and defined the existing practice of PSP to receive a mandatory rest period after three consecutive night assignments.
- (d) If any of the above are denied, please provide a justification for the denial.

**RESPONSE:**

- (a) Admit that a “three and out” rule adopted in 2015, which was different from the one adopted in WAC 363-116-081.
- (b) Admit that in late October 2018 and 2019 a 10-hour rest rule was adopted, as was 13-hour limit on multiple harbor shifts, and a “three and out,” which was different than the three and out adopted in 2021.
- (c) Admit as to 10-hour rest rule, deny as to the three and out rule.
- (d) When WAC 363-116-081 was adopted, the call time was increased to two hours, which increased the potential for a three and out. Previously, the three and out window began at travel time and not call time. PSP partially overcame this in January 2022 by reducing the call time for night assignments by 1 hour.

**PMSA DATA REQUEST NO. 627:** Regarding Exh. IC-08T 6:5, please describe what constitutes a “major impact on vessel scheduling.”

**RESPONSE:**

In PSP’s experience, a delay resulting in a “major impact on vessel scheduling” occurs when PSP dispatchers are unable to reach agreement with the ship’s agent on the duration of a delay.

**PMSA DATA REQUEST NO. 629:** Regarding Exh. IC-08T 8:8–13, admit that many PSP pilots safely work more than 143.4 assignments in a calendar year.

**RESPONSE:**

Unable to answer because no calendar year is specified.

**PMSA DATA REQUEST NO. 630:** If the response to DR 629 is a denial, please identify the members of the Puget Sound Pilots that you believe are piloting in an unsafe manner.

**RESPONSE:**

Not applicable.

**PMSA DATA REQUEST NO. 631:** Regarding Exh. IC-08T 8:8–15, admit that the number of total annual days for every PSP member’s on-watch work cycle plus three days of Peak Period Work is greater than 143.4 days per year. If denied, please explain.

**RESPONSE:**

Admit.



**PMSA DATA REQUEST NO. 632:** Regarding Exh. IC-08T 8:15–17, admit that 143.4 days is less than 182.5 days. If denied, please explain.

**RESPONSE:**

Admit.

**PMSA DATA REQUEST NO. 633:** Regarding Exh. IC-08T 8:15–17, admit that the “customary maritime industry work schedules” which “provide equal amounts of time on and time off” in a calendar year would result in 182.5 days of work and 182.5 days of rest. If denied, please explain.

**RESPONSE:**

Admit.

**PMSA DATA REQUEST NO. 634:** Regarding Exh. IC-08T 8:16–19, admit that no state agency, including neither the BPC nor the UTC, direct a specific pilot watchkeeping schedule. If denied, please explain.

**RESPONSE:**

Admit.

**PMSA DATA REQUEST NO. 635:** Further regarding Exh. IC-08T 8:16–19, please identify any all policies, regulations, or statutes adopted by the State of Washington that mandate when pilots are “required to work.”

**RESPONSE:**

Washington law requires PSP to provide pilotage services in a nondiscriminatory and safe manner.

**PMSA DATA REQUEST NO. 636:** Further regarding Exh. IC-08T 8:16–19, please identify any all policies, regulations, or statutes adopted by the State of Washington that mandate that pilots are “required to work during their off time.”

**RESPONSE:**

See response to DR 635.

**PMSA DATA REQUEST NO. 637:** Regarding Exh. IC-08T 9:1–6, admit that 5% of 180.65 days is 9 days. If denied, please explain.

**RESPONSE:**

Admit.

**PMSA DATA REQUEST NO. 638:** Further regarding Exh. IC-08T 9:1–6, admit that 9 days plus 180.65 days is 189.65 days. If denied, please explain.

**RESPONSE:**

Admit.

**PMSA DATA REQUEST NO. 639:** Further regarding Exh. IC-08T 9:1–6, admit that 143.4 days is less than 189.65 days. If denied, please explain.

**RESPONSE:**

Admit.



**PMSA DATA REQUEST NO. 640:** Regarding Exh. IC-08T 9:10–11, please provide copies of all “personally maintained spreadsheets tracking data showing the effects of those efficiency measures.”

**RESPONSE:**

I maintained multiple personal spreadsheets that evolved over time and are not anonymized. Producing these spreadsheets and responding to the many questions needed to understand and interpret those spreadsheets would be unduly burdensome and is not possible in the short time between now and the hearing in this case. All of this data is contained in the attached Job History report for year 2022.

**PMSA DATA REQUEST NO. 644:** Regarding Exh. IC-08T 14:6, admit that PMSA makes no allegation in its testimony that the PSP pilot corps is “lazy.” If denied, please provide an exact citation to the use of the word “lazy” in PMSA testimony.

**RESPONSE:**

Admit that Captain Moore did not use the word “lazy” in his testimony, but used language to that effect in his criticism of PSP.

**PMSA DATA REQUEST NO. 645:** Regarding Exh. IC-08T 16:10–11, where you state, “[u]nder our bylaws, every member of PSP who was a working licensee in a given year receives the same income as every other pilot,” admit that actual cash distributions to pilot vary by individual and do not equal the state amount of income in the bylaws.

**RESPONSE:**

Deny.

**PMSA DATA REQUEST NO. 646:** If DR 645 is denied, please provide documentation that demonstrates that every member of PSP who was a working licensee in a given year receives the same annual cash distribution of income as every other pilot for each year 2017-2021, and 2022 if available.

**RESPONSE:**

PMSA has copies of PSP's annual audits for 2017 through 2021 and will receive PSP's 2022 audit within the next week.

**PMSA DATA REQUEST NO. 649:** Regarding Exh. IC-08T 18:5, admit that Puget Sound Pilots do not currently work equal amounts of time on and time off. If denied, please demonstrate how pilots in 2021 and 2022 worked equal amounts of time on and time off.

**RESPONSE:**

Deny. On average, members of the PSP pilot corps work more than 50% of the days in a calendar year.

**PMSA DATA REQUEST NO. 655:** Regarding Exh. IC-08T 6:14–17, please identify with specificity the contents of “the growing and compelling body of evidence” referenced.

**RESPONSE:**

See testimony of Dr. Charles Czeisler, Exh. CAC-01T and 04T.

**PMSA DATA REQUEST NO. 656:** Regarding Exh. IC-08T 6:14–17, please identify with specificity the manner in which the pilotage services provided by Puget Sound Pilots are “less safe,” including all of the following:

- (a) The safety baseline against which district safety performance is being compared, such that it was safer before and “less safe” now.
- (b) Which specific pilotage services were safer before and which are “less safe” now when compared against a district safety performance baseline.
- (c) Which specific private rules, guidelines, or operations performed by PSP were safer before but are “less safe” now.
- (d) Which specific pilots were performing their pilotage duties in a manner that were safer before but are “less safe” now.

**RESPONSE:**

- (a) through (d): See testimony of Dr. Charles Czeisler at Exh. CAC-01T and Exh. CAC-04T 4:1-17.

**PMSA DATA REQUEST NO. 657:** Regarding Exh. IC-08T 6:16–17, and the statement that “Puget Sound Pilots are performing an unsafe level of callback activity,” is PSP knowingly dispatching off-watch pilots to assignments in a manner which will result in violations of state of Washington statutes or regulations governing pilot fatigue?

**RESPONSE:**

No.



**PMSA DATA REQUEST NO. 658:** Regarding Exh. IC-01T 15:18–20:9 and Exh. IC-08T 11:16–17, regarding the methods by which PSP has implemented the UTC 2020 Order with respect to efficiency and the use of comp days and callbacks, please respond to all of the following:

- (a) Admit that PSP was advised in 2021 by a consultant that funded comp days “undermined motivation to have an efficient rotation/dispatch system.” If denied, state the basis for denial.
- (b) Admit that PSP was advised in 2021 by a consultant that the funded comp day system “incentivizes inefficiency by increasing the desirability of accruing comp days. Ultimately, this works against the pilots.” If denied, state the basis for denial.
- (c) Admit that PSP was advised in 2021 by a consultant that “[t]he more efficient the dispatch system, and the fewer the number of pilots needed, the more the pilots will ultimately make.” If denied, state the basis for denial.
- (d) Admit that PSP was advised in 2021 by a consultant that “[w]e are not aware of any other pilot group that relies on comp days to the extent that Puget Sound does.” If denied, state the basis for denial.

**RESPONSE:**

Puget Sound Pilots vigorously objects to the fact that the PMSA in this data request is seeking to exploit privileged attorney-client communication, specifically a memorandum dated March 2021 that apparently is in the possession of PMSA. PSP objects to responding in any fashion to questions from PMSA that are based upon a privileged attorney-client document that, however received by PMSA, should be immediately returned to PSP. The attorney-client privilege entitles PSP not to respond to this data request. Further, unless the March 2021 attorney-client document now in the possession of PMSA's returned on or before the close of business on March 24, 2023, PSP will bring this matter to the attention of the administrative law judge. Further, PMSA must confirm in writing that it will not direct questions at the upcoming evidentiary hearing to PSP witnesses that it in any way utilize the communications in this memorandum.