

PUGET SOUND PILOTS' RESPONSES TO PMSA DATA REQUESTS Nos. 700-741

DATE PREPARED: March 16, 2023 DOCKET: TP-220513 REQUESTER: Pacific Merchant Shipping Association ("PMSA")	WITNESSES: CHARLES COSTANZO RESPONDER: CHARLES COSTANZO PUGET SOUND PILOTS DATE: March 22, 2023 TEL: (203) 980-3051 EMAIL: <a href="mailto:ccostanzo@pspilots.com">ccostanzo@pspilots.com</a>
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**PMSA DATA REQUEST NO. 700:** Regarding Exh. CPC-21T 6:24–7:2 and your allegation that foreign flagged vessels are flagged “for the specific purpose of evading compliance with regulatory standards,” please provide your own direct and personal knowledge in order to respond to all the following:

- (a) Describe, with specificity and on the basis of your own personal knowledge, the exact regulatory standards in U.S. waters that a vessel can evade compliance with on the basis of “the use of flags of convenience.”
- (b) Describe, with specificity and based on your own personal knowledge, the exact regulatory standards in U.S. waters that a vessel can evade compliance with on the basis of “the use of . . . single vessel shell entities.”
- (c) Describe, with specificity and based on your own personal knowledge, the exact regulatory standards in U.S. waters that a vessel can evade compliance with on the basis of “the use of . . . last voyage flags.”

**RESPONSE:**

- (a) Objection. It is impossible to answer the question without first knowing the actual flag state of the vessel. Subject to that objection, a vessel sailing under a flag of convenience would be able to avoid any and all regulations that would apply to a vessel sailing under another flag.
- (b) Objection. It is impossible to answer the question without first knowing the nearly infinite alternative legal corporate structures under which a vessel can be held. Subject to that objection, single vessel shell entities are not used to evade regulation but rather to limit liability and to limit the recovery of party in a legal dispute against the vessel and its operator.
- (c) Objection, it is not clear from the question the location or types of activities in which the subject vessel is engaged and therefore impossible to understand the jurisdiction establishing regulatory authority over the subject ship.

**PMSA DATA REQUEST NO. 701:** Regarding Exh. CPC-21T 6:24–7:2 and your allegation that foreign flagged vessels are flagged “for the specific purpose of . . . externalizing tort liability,” please respond to all the following:

- (a) Describe, with specificity and based on your own personal knowledge, the exact tort liability that a vessel can externalize on the basis of “the use of flags of convenience.”
- (b) Describe, with specificity and based on your own personal knowledge, the exact tort liability that a vessel can externalize on the basis of “the use of . . . single vessel shell entities.”
- (c) Describe, with specificity and based on your own personal knowledge, the exact tort liability that a vessel can externalize on the basis of “the use of . . . last voyage flags.”

**RESPONSE:**

- (a) A vessel sailing under a flag of convenience would be able to externalize the tort liability of any jurisdiction unable to assert jurisdiction over the vessel. The exact tort liability or liabilities that could be externalized is generally enormous in scope and impossible to enumerate. Just one example would be a sailor injured while sailing aboard a vessel under a U.S. flag who would be entitled to recover under the Jones Act at 46 U.S.C. § 30104 et. seq. A sailor aboard a ship under a flag of convenience would not have this protection.
- (b) A single vessel shell entity allows a tortfeasor to appear much smaller than it really is, in terms of its capitalization, and thereby limit the recovery of a plaintiff against the tortfeasor.
- (c) Last voyage flags allow a tortfeasor to scrap ships in jurisdictions that provide little or no labor or environmental protections. In these jurisdictions, it would be more challenging to maintain and recover from a claim for a workplace injury tort action or environmental tort action.

**PMSA DATA REQUEST NO. 702:** Regarding Exh. CPC-21T 6:24–7:2, admit that this testimony is based on the conclusions of current literature cited in your testimony, but not on your own direct, personal knowledge of the issues that are the subject of your testimony.

**RESPONSE:**

Deny.

**PMSA DATA REQUEST NO. 703:** If DR 702 is anything other than a full admission, please provide with specificity those vessels of which you have direct, personal knowledge that are evading compliance with the regulatory standards of the United States while operating in the Puget Sound pilotage district and that are externalizing tort liability in the United States while operating in the Puget Sound pilotage district.

**RESPONSE:**

My testimony regarding shippers using flags of convenience, single shell vessel entities, last voyage flags refers generally to common practices in the shipping industry. However, one example is that every ship calling Puget Sound under a flag of convenience is not subject to the U.S. crewing and workplace liability regulatory standards to which U.S.-flag vessels would be subject.

**PMSA DATA REQUEST NO. 704:** Regarding the Captain of the Port Reports at Exh. CPC-22, admit that the United States Coast Guard directed repair or required repair of all mechanical issues for both U.S.-flagged and foreign-flagged vessels identified in the list of Marine Occurrences. If denied, state the basis of denial.

**RESPONSE:**

Admit.

**PMSA DATA REQUEST NO. 705:** Regarding Marine Safety Occurrences, as described at Exh. CPC-21T 7:13–25, please respond to all of the following:

- (a) Admit that most marine safety occurrences result from equipment malfunctions such as engine failures (usually brief), and other causes of marine safety occurrences include fishing nets, tug lines parting, and small vessels not following the “rules of the road.”
- (b) If DR 705(a) is denied, please state the basis of denial.
- (c) Admit that a pilot Incident reported to the BPC, which includes collision, allision, or grounding of vessels, personal injury or property damage, including injuries to pilots and pilot trainees, is a more substantial measure of pilotage risk than a Marine Safety Occurrence reported to the BPC, which is a near-miss or a concern for navigational safety encountered or observed by a pilot.
- (d) If DR 705(c) is denied, please state the basis of denial.

**RESPONSE:**

- (a) Admit that most marine safety occurrences result from equipment malfunctions and also admit that other causes of marine safety are listed in PMSA DR 705(a).
- (b) N/A.
- (c) Objection. The term “more substantial measure of pilotage risk” is not sufficiently defined. Subject to the objection, deny.
- (d) DR 705(c) requests an admission that a pilot incident report involving an allision, collision, or grounding is “a more substantial measure of pilotage risk than a Marine Safety Occurrence.” The term “pilotage risk” is vague in this context and the exact nature of the marine incident, rather than the broad category of marine incident, would determine the relative risk of a vessel experiencing a marine casualty.

**PMSA DATA REQUEST NO. 708:** Regarding Exh. CPC-23, for each of the 26 vessel MSOs included on this table, please respond to all of the following:

- (a) Admit that 10 of the 26 total vessels with MSO's, or 38.5%, are U.S.-flagged vessels.
- (b) Admit that 6 of the 9 "casualties," or 66.6%, are on U.S.-flagged vessels.
- (c) Admit that U.S.-flagged vessels, with 6, had twice as many casualties than foreign-flagged vessels, with 3.
- (d) Admit that 6 of the 26 total vessels with MSO's, or 23.1%, are Bahamas, Liberia, and Marshall Islands flagged vessels.
- (e) Admit that 2 of the 9 "casualties," or 22.2%, are Bahamas, Liberia, and Marshall Islands flagged vessels.
- (f) Admit that according to your testimony in this table, U.S.-flagged vessels, with 6, had three times as many casualties than Bahamas, Liberia, and Marshall Islands flagged vessels, with 2.
- (g) Admit that the vessel with the highest number of "deficiencies" on this table is a U.S.-flagged vessel.
- (h) Admit that the vessel with the second-highest number of "deficiencies" on this table is a U.S.-flagged vessel.
- (i) Admit that the two vessels with the highest numbers of "deficiencies" are also the two oldest vessels on this table.
- (j) Admit that according to your testimony in this table, U.S.-flagged vessels have more "casualties" than foreign-flagged vessels, U.S.-flagged vessels have the two highest levels of vessel "deficiencies," & U.S.-flagged vessels are the two oldest vessels.
- (k) Admit that 10 of the 26 total vessels with MSO's, or 38.5%, are newer vessels which were built in 2011 or later, with presumably a decade in service by 2022.
- (l) Admit that these newest vessels, built in 2011 or later, had 0 of the 9, or 0%, of the vessel "casualties."
- (m) If any of the preceding (a)-(l) are denied, please provide a basis for the denial.

**RESPONSE:**

- (a) Admit.
- (b) Admit.
- (c) Admit.
- (d) Admit.
- (e) Admit.
- (f) Admit.
- (g) Admit.

(h) Admit.

(i) Admit.

(j) Admit.

(k) Admit.

(l) Admit.

(m)N/A.



**PMSA DATA REQUEST NO. 709:** Regarding Exh. CPC-21T 9:5–13, please respond to all of the following:

- (a) Admit that the 2021 Panamanian flagged vessel detention ratio was 12 vessels out of 1,415 U.S. Coast Guard Port State Control examinations, or 0.85%.
- (b) Admit that the U.S. Coast Guard 2019-2021 Panamanian flagged detention ratio was 1.01%.
- (c) Admit that the U.S. Coast Guard will target flag administrations for additional examinations if their three-year detention ratio is higher than 1%.
- (d) Admit that a flag administration is only categorized as high risk if their overall three-year detention ratio is greater than 2.0%.
- (e) Admit that Panamanian flagged vessels are not categorized as high risk.
- (f) If any of the preceding (a)-(e) are denied, please provide a basis for the denial.

**RESPONSE:**

- (a) Admit.
- (b) Admit.
- (c) Admit.
- (d) Admit.
- (e) Admit and further admit that the Panamanian flag was removed from the Paris MoU blacklist in 2010.
- (f) N/A.

**PMSA DATA REQUEST NO. 710:** Regarding Exh. CPC-21T 10:18–23, regarding your testimony alleging that the “International Shipping Organization (IMO)” is “an insider’s club for commercial shipping interests to avoid environmental regulations,” please respond to all of the following:

- (a) Admit that the IMO is the “International Maritime Organization,” not the “International Shipping Organization.”
- (b) Admit that the IMO is not a “club.”
- (c) Admit that the IMO is a specialized agency of the United Nations which is responsible for measures to improve the safety and security of international shipping and to prevent pollution from ships.
- (d) Admit that commercial shipping interests are not members of the IMO.
- (e) Admit that the IMO currently has 175 member states, including the United States, which joined the IMO in 1950.
- (f) Admit that the International Maritime Pilots’ Association is a non-governmental organization that represents pilot organizations, such as PSP.
- (g) Admit that the International Maritime Pilots’ Association has been granted consultative status with IMO.
- (h) Admit that the IMO enacts treaties that impose global environmental regulations.
- (i) Admit that the IMO enacts treaties that impose global mariner safety standards and regulations.
- (j) Admit that the IMO enacts treaties that impose global vessel safety standards and regulations.
- (k) Admit that IMO treaties become effective when implemented as domestic law in each country so they can be applied to ships under that vessel’s flag state control and so that country can implement effective Ports State Control pursuant to IMO treaty.
- (l) Admit that the IMO promulgated MARPOL treaty, the International Convention for the Prevention of Pollution from Ships, is enforced by the United States Coast Guard under flag state and port state control to the extent implemented by federal law.
- (m) Admit that the IMO promulgated the STCW treaty, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, is enforced by the United States Coast Guard under flag state and port state control to the extent implemented by federal law.
- (n) Admit that the IMO promulgated the SOLAS treaty, the International Convention for the Safety of Life at Sea, is enforced by the United States Coast Guard under flag state and port state control to the extent implemented by federal law.
- (o) Admit that the IMO has specifically addressed the need to ensure the safety of pilot transfers in Chapter V of SOLAS.
- (p) Admit that the IMO has adopted multiple resolutions regarding requirements to ensure safe pilot transfer arrangements.
- (q) Admit that the IMO SOLAS treaty and IMO resolutions are the basis for the guidance regarding “Required Boarding Arrangements for Pilot” published by the International Maritime Pilots’ Association.

- (r) Admit that IMO SOLAS Chapter V and IMO resolutions regulate onboard ship requirements and the safe deployment of pilot ladder arrangements in the United States and are enforceable by the United States Coast Guard through flag state control and port state control.
- (s) Admit that PSP reports all non-compliant pilot transfer arrangements to the United States Coast Guard.
- (t) If any of the preceding (a)-(s) are denied, please provide a basis for the denial.

**RESPONSE:**

- (a) Admit.
- (b) Deny. The testimony referred to a characterization by the New York Times of the IMO as “clubby”.
- (c) Admit.
- (d) Deny.
- (e) Admit.
- (f) Admit.
- (g) Admit.
- (h) Admit.
- (i) Admit.
- (j) Admit.
- (k) Admit.
- (l) Admit.
- (m) Admit.
- (n) Admit.
- (o) Admit.
- (p) Admit.
- (q) Admit.
- (r) Admit.

- (s) Admit.
- (t) IMO members are specifically nation-states. While commercial shipping interests are not “members” of the IMO, per se, delegations of individual member states are frequently represented by individuals with direct connections to commercial shipping interests. Commercial shipping interests heavily influence the IMO.

**PMSA DATA REQUEST NO. 712:** Regarding Exh. CPC-21T 14:6-18, admit that the membership of the Chamber of Shipping of America listed at <http://www.knowships.org/membership.php> includes companies that operate both U.S.-flagged vessels and foreign-flagged vessels.

**RESPONSE:**

Admit.

**PMSA DATA REQUEST NO. 713:** Regarding Exh. CPC-21T 14:6-18, admit that the membership of the Pacific Merchant Shipping Association listed at <https://www.pmsaship.com/about/members/> includes members that operate both U.S.-flagged vessels and foreign-flagged vessels.

**RESPONSE:**

Admit.

**PMSA DATA REQUEST NO. 717:** Regarding Exh. CPC-21T 16:22-26, please provide a basis and provide documentation for your statements that “PSC inspections occur at the dock while the vessel is not underway,” and “[t]he inspections themselves generally take about three to five hours to complete and the inspections seek to balance the Coast Guard marine safety mission against its commerce mission.”

**RESPONSE:**

The basis for this assertion is my ten years of experience engaged in marine safety and vessel inspection issues.

**PMSA DATA REQUEST NO. 718:** Further regarding Exh. CPC-21T 16:22-26, please admit that you have no personal knowledge of the administration of Port State Control inspections. If denied, please state the basis of your denial.

**RESPONSE:**

Deny. Through my professional experience in the maritime industry, I have personal knowledge that Port State Control exams are administered by the Coast Guard and I have knowledge of the conduct and administration of those inspections.



**PMSA DATA REQUEST NO. 719:** Further regarding Exh. CPC-21T 16:22-26, please describe your own personal knowledge of the portion of a Port State Control examination of an individual vessel where “inspections seek to balance the Coast Guard marine safety missions against its commerce mission.” If you do not possess any such personal knowledge, please so state.

**RESPONSE:**

Through my professional experience in the maritime industry, I am aware the the Coast Guard must carry out eleven missions codified in the Homeland Security Act of 2002 – two of those missions are Maritime Transportation System Management and Maritime Prevention. Given that the Coast Guard must carry out all of these missions simultaneously it stands to reason that inspections balance the competing missions of the Coast Guard.

**PMSA DATA REQUEST NO. 720:** Regarding Exh. CPC-21T 16:26–17:4, admit that the IMO guidance on Port State Control inspections cited in your testimony recommends a clear basis for inspector discretion to exceed a document review. If denied, please state the basis of your denial.

**RESPONSE:**

Deny. I have no familiarity with IMO guidance regarding Port State Control inspections and the basis for the inspector discretion to exceed document review. My familiarity is with the nature and conduct of PSC inspections as I understand them to typically occur in Puget Sound.

**PMSA DATA REQUEST NO. 721:** Regarding Exh. CPC-21T 17:11-13, admit that no party to this proceeding has recommended substituting a Port State Control system for the state-licensed pilotage system in the Puget Sound. If denied, please state the basis for denial.

**RESPONSE:**

Deny. PMSA appears to suggest that Port State Control inspections serve a comparable marine safety purpose as state pilotage. Additionally, PMSA's testimony suggests that ships pose little risk to ports and the marine environment despite the known and well-chronicled regulatory avoidance and regulatory evasion tactics utilized by many ships. Here, the PMSA has repeatedly diminished the safety benefits of state pilotage, championed the environmental and safety record of the shipping industry, and advocated to reduce funding for the state pilotage system. If such a substitution were indeed proposed, PMSA's posture in this case suggests that they would happily accept such substitution.

**PMSA DATA REQUEST NO. 722:** Regarding Exh. CPC-21T 17:17-21 where you testify that “there is significant evidence that some shipowners” are “flag hopping,” please respond to all of the following:

- (a) Admit that the U.S. DOT, U.S. State Department, and USCG 2020 Sanctions Advisory, attached as Exh. CPC-26, is an Advisory to provide guidance to detect illegal commerce with sanctioned foreign states, Iran, North Korea, and Syria.
- (b) Admit that the Advisory, attached as Exh. CPC-26, is not evidence that shipowners are “flag hopping.”
- (c) Admit that the Advisory, attached as Exh. CPC-26, is not relevant to vessels in trades serving the Puget Sound lawfully.
- (d) Admit that your testimony includes no description of any vessels alleged to have violated U.S. or international sanctions regarding trade with Iran, North Korea, or Syria.
- (e) Admit that there is no evidence of any vessel serving the Puget Sound, or any other U.S. seaport, in violation of U.S. or international sanctions regarding trade with Iran, North Korea, or Syria.
- (f) If any of the preceding (a)-(e) are denied, please provide a basis for the denial.
- (g) Please describe the full extent of your **personal knowledge** of addressing U.S. sanctions, sanctions compliance, or the implementation of sanctions advisories, and the role you have had in each case whereby you derived your personal knowledge of these sanctions matters. “**Personal knowledge**” is hereby defined as knowledge of a circumstance or fact gained through firsthand observation, experience, or one’s own senses.

**RESPONSE:**

- (a) through (g): PSP objects to providing any response to these requests, which are not legitimate data requests under the applicable WTC regulations, were propounded to waste PSP’s time that must be devoted to pre-hearing preparation and constitutes abuse of the discovery process under UTC rules.

**PMSA DATA REQUEST NO. 723:** Regarding Exh. CPC-21T 19:1–21:4 regarding vessel abandonment, please respond to all of the following:

- (a) Admit that you have provided no evidence of any growing trend of vessel abandonment in your testimony aside from impacts related to Covid-19 from one article in 2020.
- (b) Admit that you have provided no basis to conclude that vessel abandonment is a growing trend in the United States in your testimony.
- (c) Admit that you have provided no evidence of any vessel abandonments in the United States in your testimony.
- (d) Admit that you have provided no evidence of any vessel abandonment in the Puget Sound in your testimony.
- (e) Admit that you have provided no allegation of how vessel abandonment relates to vessel pilotage, generally.
- (f) Admit that you have provided no allegation of how vessel abandonment relates to vessel pilotage in the Puget Sound, specifically.
- (g) Admit that in the case of the M/V Adamastos in Brazil, your testimony discloses that the charterer obtained a multi-million dollar award post-abandonment against the vessel in a London arbitration.
- (h) Admit that in the cases of the M/V Vigorous and the M/V Fearless, your testimony is that claims based on alter-ego and successor liability theories were rejected by both a U.S. District Court and the Ninth Circuit Court of Appeals.
- (i) Admit that your testimony is that the Ninth Circuit found that the claims referenced did not demonstrate, among other things, that the vessel owner “had a fraudulent intent or an intent to circumvent statutory or contractual obligations.”
- (j) Admit that you have no personal knowledge of the abandonment of the M/V Adamastos in Brazil, or the treatment of the M/V Adamastos during the abandonment, or the resolution of the M/V Adamastos abandonment.
- (k) Admit that the Ninth Circuit conclusion that there was no liability for any other vessels means that there was no “liability evasion” by the M/V Adamastos.
- (l) Provide a copy of the ruling of the U.S. District Court to which you refer.
- (m) Provide a copy of the ruling of the Ninth Circuit Court of Appeals to which you refer.
- (n) Please describe the full extent of your **personal knowledge** of these cases, and the role you had in each case whereby you derived your personal knowledge of these cases. “**Personal knowledge**” is hereby defined as knowledge of a circumstance or fact gained through firsthand observation, experience, or one’s own senses.

**RESPONSE:**

- (a) through (m): PSP objects to providing any response to these requests, which are not legitimate data requests under the applicable WTC regulations, were propounded to waste PSP’s time that must be devoted to pre-hearing preparation and constitutes abuse of the discovery process under UTC rules.

(n) N/A.

**PMSA DATA REQUEST NO. 724:** Regarding Exh. CPC-21T 21:4-6 and your statement that “[a] similar or worse incident on Puget Sound, particularly one involving a major oil spill, would be catastrophic to the State of Washington and its citizens,” please clarify whether the “similar or worse incident” that you are referring to is the underlying abandonment of the M/V Adamastos in Brazil or the ruling in *Pacific Gulf Shipping Co. v. Vigorous Shipping & Trading S.A.*, Case No. 20-35159, by the Ninth Circuit Court of Appeals.

**RESPONSE:**

Abandonment of the M/V Adamastos.

**PMSA DATA REQUEST NO. 725:** Further regarding Exh. CPC-21T 21:4-6 , please provide data as to how many vessels of which PSP is aware have been determined to have deficiencies under US Coast Guard Port State Control or involved with a casualty while under pilotage in the Puget Sound pilotage district, or both, and for each such vessel identify whether or not those vessels were abandoned at the time of deficiency determination or casualty.

**RESPONSE:**

PSP does not track this data.



**PMSA DATA REQUEST NO. 726:** Regarding Exh. CPC-21T 21:7–24:20 and “inherently insufficient” financial responsibility requirements, please respond to all of the following:

- (a) Admit that federal and state oil spill laws and regulations do not limit liability or responsibility for spills to the amount demonstrated by presenting either a certificate of financial responsibility (“COFR”), satisfactory form of guarantee, or P&I Club coverage for oil pollution risks.
- (b) Admit that you omitted any reference to Chapter 90.56 RCW in your testimony.
- (c) Admit that RCW 90.56.310 makes it unlawful to operate a vessel without a COFR, subject to the reservations therein.
- (d) Admit that RCW 90.56.320 makes it per se unlawful for oil to be discharged from any vessel, regardless of cause, fault, intent, accident, or other cause, independent of and without reference to the presence of a COFR.
- (e) Admit that RCW 90.56.330 imposes penalties on a vessel for an oil spill of up to \$100,000 per violation per day, independent of and without reference to the presence of a COFR.
- (f) Admit that RCW 90.56.340 imposes a duty on a vessel to immediately collect, remove, or contain, treat, or disperse oil, independent of and without reference to the presence of a COFR.
- (g) Admit that RCW 90.56.360 requires that a vessel is liable to reimburse the state for all expenses incurred by the state in carrying out a response to an oil spill from a vessel, independent of and without reference to the presence of a COFR.
- (h) Admit RCW 90.56.370 mandates that a vessel that spills oil is a responsible party that has strict liability for all damages resulting from the oil spill, without regard to fault, for all public or private costs, and damages resulting from response to a spill, except and unless the oil spill was caused by an act of war, an act of God, the negligence of the United States, or the negligence of the State of Washington, independent of and without reference to the presence of a COFR.
- (i) Admit that you were aware of Chapter 90.56 RCW at the time of your testimony.
- (j) Admit that you were aware that COFR limits do not limit the unlimited strict oil spill liability imposed on a responsible party under Chapter 90.56 RCW.
- (k) Admit that you are aware that there are no maximum financial responsibility thresholds for oil spills under Washington state law.
- (l) Admit that you are aware that the presence of a COFR or an indemnity policy is a requirement subsequent to and in addition to the strict liability imposed under Chapter 90.56 RCW.
- (m) Admit that the distinction between a traditional liability policy and an indemnity policy is immaterial under a strict liability statute such as that imposed on vessels under Chapter 90.56 RCW as a vessel is strictly liable for claims regardless of how it is, or is not, insured.
- (n) Admit that under Chapter 90.56 RCW liability and recovery from a vessel is never limited to the amount of the federal COFR under OPA 90.
- (o) Admit that the Chapter 90.56 RCW rules for responsible parties apply equally to US-flagged and foreign-flagged vessels.
- (p) Admit that the Chapter 90.56 RCW rules for responsible parties apply to vessels whether or not a single-asset company owns the vessel.

- (q) If any of the preceding (a)-(p) are denied, please provide a basis for the denial.
- (r) Please describe the full extent of your **personal knowledge** of these statutes, their application generally, and their applications by vessel owners' COFR practices and vessel owners' indemnity policies, and the experiences and roles that you had in each case whereby you derived your personal knowledge of these statutes and their application by vessel owners. "**Personal knowledge**" is hereby defined as knowledge of a circumstance or fact gained through firsthand observation, experience, or one's own senses.

**RESPONSE:**

- (a) through (q): PSP objects to providing any response to these requests, which are not legitimate data requests under the applicable WTC regulations, were propounded to waste PSP's time that must be devoted to pre-hearing preparation and constitutes abuse of the discovery process under UTC rules.
- (r) N/A.

**PMSA DATA REQUEST NO. 727:** Further regarding Exh. CPC-21T 21:7–24:20, and your conclusion that “the P&I Club will almost certainly deny coverage,” please respond to all of the following:

- (a) Admit that no oil spills have occurred under pilotage in the Puget Sound as a result of a vessel allision, collision, or grounding in the past 20 years. If denied, please identify the vessel incident.
- (b) Admit that the largest oil spill by liability for a vessel under pilotage in the United States as a result of allision, collision, or grounding in the past 20 years was the M/V Cosco Busan allision with the San Francisco Bay Bridge in 2007.
- (c) Admit that the cost of the clean-up of the Cosco Busan oil spill exceeded the federal COFR.
- (d) Admit that the cost of the clean-up of the Cosco Busan oil spill exceeded the State of California COFR.
- (e) Admit that the responsible party laws of California made the Cosco Busan strictly liable for the costs of the oil spill.
- (f) Admit that the P&I Club did not deny coverage of the Cosco Busan oil spill.
- (g) Admit that the shipowner did not simply abandon the vessel and walk away from its liabilities.
- (h) Admit that as demonstrated in the testimony of PSP witness, Capt. Stoller, Exh. MSS-03, that P&I Club claims associated with the Cosco Busan allision and subsequent spill totaled in excess of \$200 million.
- (i) Admit that, as demonstrated in the testimony of PSP witness, Capt. Stoller, Exh. MSS-03, that P&I Clubs paid claims associated with pilotage accidents which totaled over \$1.8 billion from 1999-2018.
- (j) If any of the preceding (a)-(i) are denied, please provide a basis for the denial.
- (k) Please describe the full extent of your **personal knowledge** of the administration of claims by vessel owners’ under P&I Club indemnity policies, and the experiences and roles that you had in each case whereby you derived your personal knowledge of these statutes’ application by vessel owners. “**Personal knowledge**” is hereby defined as knowledge of a circumstance or fact gained through firsthand observation, experience, or one’s own senses.

**RESPONSE:**

- (a) through (j): PSP objects to providing any response to these requests, which are not legitimate data requests under the applicable WTC regulations, were propounded to waste PSP’s time that must be devoted to pre-hearing preparation and constitutes abuse of the discovery process under UTC rules.

(k) N/A.

**PMSA DATA REQUEST NO. 728:** Regarding Exh. CPC-21T 27:7-10 and a “current scarcity of qualified mariners,” please respond to all of the following:

- (a) Describe what you mean by phrase the “current scarcity of qualified mariners.”
- (b) Identify in prior testimony by PSP in this general rate case any discussion of a “current scarcity of qualified mariners.”
- (c) Admit that BPC has never had a scarcity of qualified mariners in its training program such that BPC has been unable to fill an available Puget Sound Pilot license.
- (d) Please quantify the “current scarcity of qualified mariners.”
- (e) For all data used in the quantification in (d), please cite or identify the source and provide a copy of the original data used or relied upon.

**RESPONSE:**

- (a) Marine industry employers are currently having a difficult time finding qualified personnel to work aboard vessels.
- (b) None.
- (c) While the BPC has typically been able to find a white male to fill an available pilot license, there has been a noted difficulty attracting a more diversified applicant pool.
- (d) A number of qualified mariners below the number needed to fill available jobs.
- (e) N/A.

**PMSA DATA REQUEST NO. 729:** Further regarding Exh. CPC-21T 27:7-10 please quantify “the degree to which competitive compensation influences the small number of mariners who are qualified to become pilots.”

**RESPONSE:**

My testimony was that PMSA Witness Nalty, as an individual unfamiliar with the maritime industry, may not appreciate the degree to which competitive compensation influences mariner decisions to pursue a pilotage career.

**PMSA DATA REQUEST NO. 730:** If no quantification is provided in response to DR 729, admit that PSP does not know the degree to which compensation influences potential trainees in the Puget Sound. If denied, please state the basis of the denial.

**RESPONSE:**

To the best of PSP's knowledge, this factor has never been quantified.

**PMSA DATA REQUEST NO. 732:** Regarding Exh. CPC-21T 27:23, admit that PMSA supported the inclusion of the expenses of DEI training for PSP in its testimony. If denied, please state the basis of the denial.

**RESPONSE:**

Admit.

**PMSA DATA REQUEST NO. 733:** Further regarding Exh. CPC-21T 27:23, please clarify your testimony: is it your contention that increasing pilot DNI will “fund the important outreach, mentorship, and training that PSP has identified”? If the answer is yes, please describe how increased pilot DNI will fund outreach, mentorship, and training.

**RESPONSE:**

By increasing pilot DNI, PSP as an organization will have greater resources to carry out all of its missions, including identifying, mentoring, recruiting underrepresented mariners to join the Puget Sound pilot corps.



**PMSA DATA REQUEST NO. 736:** Regarding Exh. CPC-21T 30:3-6, please clarify: when your testimony cites RCW 88.16.055(1)(f) for the proposition that the “legal obligation of PSP is referenced specifically in both statute by the Washington Legislature and in regulation by the Washington Board of Pilotage Commissioners,” state precisely the language in RCW 88.16.055(1) to which you refer.

**RESPONSE:**

RCW 88.16.055(1) provides that “as an element of the Puget Sound pilotage district tariff, the utilities and transportation commission may consider pilot retirement expenses incurred in the prior year.”

**PMSA DATA REQUEST NO. 740:** Regarding your testimony's references to *State ex rel. Pacific Telephone & Telegraph Co. v. Department of Public Service*, 19 Wash.2d 200 (1943), please respond to all of the following:

- (a) Please provide a copy of the *Pacific Telephone* decision referenced.
- (b) Admit you omitted from your testimony this conclusion by the Court (*id.* at 260):  
“We make this ruling, as we make others, upon the record before us. If at some future time the department is called upon to reconsider the question of pensions, and the evidence discloses a different state of facts, the department will be free to reexamine the matter.”
- (c) Admit that the evidence in the current rate case discloses a different state of facts than the rate case in *Pacific Telephone*.
- (d) Admit that the Court in *Pacific Telephone* intended its ruling not to be precedential with respect to subsequent cases that were based on a different state of facts.
- (e) Admit that the *Pacific Telephone* case was decided in 1943.
- (f) Admit that 1928 is 15 years prior to 1943.
- (g) Admit that *Pacific Telephone* did not consider a surcharge for pension obligations.
- (h) Admit that *Pacific Telephone* did not consider current year funding of a “pay-go” retirement system.
- (i) Admit that *Pacific Telephone* did not consider future year funding of an ongoing “pay-go” retirement system.
- (j) Admit that *Pacific Telephone* considered funding contributions by employers to a defined benefit contribution.
- (k) Admit that *Pacific Telephone* did not consider funding contributions by members of an unincorporated association governed by by-laws.
- (l) Admit that in *Pacific Telephone* employees of Pacific Telephone participate in a funded defined benefit pension system to which the employer made contributions to a fund.
- (m) Admit that in *Pacific Telephone* the employer, Pacific Telephone, had been making contributions to a fund for 15 years prior to the decision regarding the appropriateness of employer contributions.
- (n) Admit that the Pacific Telephone defined benefit plan that its employees were enrolled in was actually the “American Company” plan, noting that Pacific Telephone & Telegraph Co. was a subsidiary of the national American Telephone & Telegraph Co.
- (o) Admit that the American Company reserved the right to adjust “the amount of pensions to be paid” such that they “may be increased or diminished at the direction of the American Company.” *Id.* at 252.
- (p) Admit that in *Pacific Telephone* the UTC-predecessor agency, the State Department of Public Service in this case proposed to withhold payments to the Pacific Telephone pension on multiple bases, including that the payments “were exorbitant and unreasonable,” “unjustified,” that based on the obligation of Washington residents “to contribute through taxation to the state senior citizens’ relief and that to charge respondent’s contributions” to the private plan was “an

unreasonable burden,” and that the advent of the federal Social Security system that “employees will receive excessive or double pensions.” *Id.* at 253.

- (q) Admit that the original American Company pension plan was established “long prior to the enactment of Federal or state statutes providing for payments to persons reaching certain specified ages.” *Id.* at 253.
- (r) Admit that you omitted from your testimony this observation by the Court (*id.* at 253):
  - “The pension plan referred to is in effect in all American Company’s subsidiaries. If that portion of the order of the department now under discussion be affirmed, manifestly either respondent’s employees in the is state would be deprived of benefits under the pension plan, or, as to them, the pension fund would be supported from revenues received by the American Company from other jurisdictions, or from respondent’s net return from this jurisdiction, or from the net return to the American Company.”
- (s) Admit that under the American Company plan “[a]ll contributions to the pension fund made by respondent and associated companies to the trustee of the pension fund are irrevocable payments, and that fund must be used solely to pay pensions to employees.” *Id.* at 253-254.
- (t) Admit that under the American Company plan “respondent makes periodic payments to the trustee in such amounts that a fund adequate to pay anticipated pensions will accumulate.” *Id.* at 254.
- (u) Admit that the Court in *Pacific Telephone* relied (*id.* at 254-255) on the opinion in the case of *State v. Tri-State Tel. & Tel. Co.*, 204 Minn. 516, 284 N.W. 294, for this proposition:
  - “Within limits, expenditures for this purpose should be treated as an expense. In deciding whether a specific claim for allowance for payments for such purposes should be granted, the commission must necessarily give due consideration to the discretion exercised by the management in establishing a pension system. If the amounts are reasonable and are actually paid as pensions, or are allocated to a fund in pursuance of a feasible plan whereby it is assured that the sums so allocated will be used to pay pensions in reasonable amounts, allowance should be made.”
- (v) Admit that in *Pacific Telephone* the actuarial rates applicable were developed nationwide for all American Company employees.
- (w) Admit that in *Pacific Telephone* the definition, specifics, or any explanation as to the characteristics of the “pay as you go” plan that existed prior to 1928 are unknown and not explained, other than when “the company changed this system” that it adopted “an accrual plan of payment based upon actuarial tables and studies.” *Pacific Telephone* at 259.
- (x) Admit that the specific argument described in *Pacific Telephone* was a challenge by the State Department to a charge “imposed upon present rate payers to make up a deficiency in the pension fund which existed prior to 1928, and the change in plan

**PMSA DATA REQUEST NO. 741:** Regarding PSP pilotage risk, please respond to all the following:

- (a) Admit that oil product consumption and transportation of oil products is declining and the decline is projected to accelerate.
- (b) Admit that as demand for oil products declines, so too will risk of spills.
- (c) Admit that non-tank vessels do not represent an increase in the risk of an oil spill.
- (d) Admit that it is inappropriate to increase the burden of fees on non-tank vessels for oil spill risks.
- (e) Admit that marine oil spills have decreased since 1991.
- (f) Admit that significant improvements in vessel equipment drive risks of marine oil spills down.
- (g) Admit that significant improvements in vessel inspection regulations drive risks of marine oil spills down.
- (h) Admit that significant improvements in vessel standards of care drive risks of marine oil spills down.
- (i) Admit that significant improvements in vessel crew training drive risks of marine oil spills down.
- (j) Admit that significant improvements in vessel safety management advances drive risks of marine oil spills down.
- (k) Admit that significant improvements in all of the cumulative vessel characteristics identified in (e)-(i) above drive risks of marine oil spills down.
- (l) Admit that the U.S. Coast Guard already extensively regulate maritime spill prevention and response.
- (m) Admit that the marine freight transportation system is the greenest and safest mode of freight transportation facilitating interstate commerce around the world.
- (n) Admit that the port industrial community is working diligently to reduce its carbon emissions.
- (o) Admit that as vessel operators must comply with multiple regulatory regimes, it is important for vessels to operate within a regulatory framework that allows for the continued safe and efficient movement of critical maritime commerce across state and international boundaries.
- (p) Admit that commercial vessels must be governed by clear and practical federal statutes and regulations, consistently and uniformly applied and administered across the country.
- (q) Admit that when regulators seek to solve environmental regulatory problems only at a local or regional level it is ineffective, and so it is preferable to address these issues through federal and international bodies like the U.S. EPA and IMO, which create greater consistency.
- (r) Admit that since maritime is the cleanest mode of transportation, Washington policies that disincentivize maritime freight may push cargo towards other modes of transportation or less-green maritime gateways.
- (s) Admit that regulators must consider costs, regulatory burdens, viability of alternatives, and long-term growth opportunities before imposing regulations which potentially impact maritime activity or growth in maritime freight operations.

- (t) Admit that the maritime industry may be characterized as one of “compliance” and “innovation” with respect to issues such as emission reductions, fuel and engine modifications, and the introduction of new vessel propulsion technologies.
- (u) If any of the preceding (a)-(t) are denied, please provide a basis for the denial.

**RESPONSE:**

(a) through (t): PSP objects to providing any response to these requests, which are not legitimate data requests under the applicable WTC regulations, were propounded to waste PSP’s time that must be devoted to pre-hearing preparation and constitutes abuse of the discovery process under UTC rules.

(u) N/A.