

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

Docket TP-

**PETITION OF PUGET SOUND
PILOTS FOR INTERIM RATE
RELIEF AND REQUEST FOR
EXPEDITED CONSIDERATION**

I. INTRODUCTION AND IDENTITY OF PETITIONER

1. Petitioner Puget Sound Pilots (“PSP”) is an unincorporated association of Washington state-licensed maritime pilots charged by statute with preventing the loss of human lives, loss of property and vessels, and protecting the marine environment of the State of Washington. *See* RCW 88.16.005. PSP’s principal office is headquartered at 2003 Western Ave., Suite 200, Seattle, WA 98121.
2. Pursuant to WAC 480-07-395, PSP respectfully requests that the Washington Utilities & Transportation Commission (the “Commission”) grant PSP interim rate relief in order to mitigate the substantial hardship that PSP and its members have suffered and continue to suffer due to the discrepancy between the number of full-time pilots funded by the current tariff and the number of pilots that comprise PSP’s actual membership and the imminent addition of three new pilots during the pendency of the current general rate case.
3. Contemporaneous with this petition, PSP initiated general rate proceedings under RCW 81.116.030 and WAC 480-160-120. That initial filing includes written testimony from 22 witnesses that leaves no question that PSP’s authorized revenue under the current tariff is far below what is sufficient to fund a pilotage program that fairly compensates current pilots and

is competitive in attracting and retaining the best candidates from within a small national pool. This petition requests expedited interim relief to at least ensure that current pilots' hardship under the current tariff is not further exacerbated by the addition of unfunded pilots while the Commission adjudicates the now-pending general rate case.

4. The Washington Board of Pilotage Commissioners ("BPC") has authorized PSP to maintain a pilot corps of 56 licensees. The current tariff, however, funds just 52 full-time pilots. BPC recently licensed a 53rd pilot and is poised to license two more pilots at the Board's next scheduled meeting on July 19. PSP further anticipates that BPC will license one additional pilot during the pendency of PSP's second general rate case filed contemporaneously with this petition, raising PSP's membership to the full complement of 56 full-time pilots authorized by BPC.
5. The addition of these pilots is necessary to PSP's fulfillment of its mission to protect life, property, and the marine environment. But because the current tariff funds just 52 pilots (approximately 93% of the BPC-authorized pilot corps), the estimated annual cost of \$499,000 per licensee will be born entirely by PSP's current members, resulting in an extraordinary further reduction in individual pilots' income that has already fallen far below the target DNI approved by the Commission in the current tariff.
6. In order to mitigate gross inequity to PSP and its members, PSP petitions for interim relief and requests that the tariff be adjusted to generate additional revenue that is sufficient to offset the cost to PSP of additional licensees that have joined PSP and that are expected to do so in short order.

II. BACKGROUND

7. On November 25, 2020, the Commission entered its Final Order (Order 09) in PSP’s seminal rate case. Pursuant to that Order, PSP’s current tariff went into effect on January 25, 2021. The tariff currently funds 52 full time pilots at a target DNI of \$410,075 per pilot.
8. Total revenue approved by the Commission to fund target DNI was based on the Commission’s projections that badly underestimated actual vessel traffic. As a result, in the first tariff year, pilots earned just 74% of the Commission’s approved target DNI.¹

III. PUGET SOUND PILOTS MEET THE APPLICABLE LEGAL STANDARD FOR INTERIM RATE RELIEF

9. In support of this motion, PSP relies on WAC 480-07-395, the record filed contemporaneous herewith in support of PSP’s general rate case, and the points and authorities cited herein.
10. The Washington Supreme Court recognized the Commission’s authority to issue interim rate adjustments in *State ex rel. Puget Sound Navigation Company v. Department of Transportation*, 33 Wn. 2d 448, 206 P.2d 456 (1949). The Commission’s standard for interim relief is set out in *WUTC v. Pacific Northwest Bell Telephone Co.*, Cause No. U-72-30, Second Supplemental Order Denying Petition for Emergency Rate Relief (October 1972) (hereinafter *Pacific Northwest Bell*). Puget Sound Pilots’ request satisfies each of the six factors considered under the prevailing standard. Each factor is addressed in turn below.

¹ The Commission’s significant overestimate of vessel traffic was foreseeable given the ongoing (and at the time Order 9 was issued, highly acute) effects of the Covid-19 pandemic. However, the Commission expressly refused to factor the effects of the pandemic into PSP’s tariff. *WUTC v. Puget Sound Pilots*, No. TP-190976 at 108–09 (2020) (Final Order Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing). That was a clear mistake that caused significant undue hardship to individual pilots and their families. It is worth noting that while pilots saw their incomes decline sharply during the pandemic, their ratepayers in the foreign shipping industry have capitalized on these same prevailing conditions by raising shipping rates by as much as 1,000% and recording record profits at the expense of American consumers. PSP respectfully submits that on these facts the current tariff has produced outcomes that are decidedly not “fair, just, and reasonable.”

- 11. Factor No. 1. The Commission has authority under proper circumstances to grant interim rate relief, but only after an opportunity for adequate hearing:** PSP's request for interim relief is straightforward. The addition of new members during the current tariff year and resulting reduction in pilot income is objectively verifiable and not subject to reasonable dispute. Under the circumstances, an adequate hearing can and should be commenced expeditiously.
- 12. Factor No. 2. An interim rate increase is an extraordinary remedy and should be granted only where an actual emergency exists or where necessary to prevent gross hardship or gross inequity:** Rates under the current tariff are grossly inequitable because they do not fund the actual number of full-time pilots that comprise PSP's membership and therefore significantly reduce individual pilots' DNI below the level authorized by the Commission. DNI is the overwhelming majority of individual pilots' primary source of income. The large deficit between target and real DNI that has prevailed throughout the duration of the current tariff and is exacerbated by the tariff's failure to fund the total number of full-time pilots imposes a substantial and unjustified financial burden on pilots and their families. Interim relief is necessary to mitigate this harsh effect.
- 13. Factor No. 3. The mere failure of the currently realized rate of return to equal that approved as adequate is not sufficient, standing alone, to justify the granting of interim relief:** Even without the increase in PSP's membership ranks, the current tariff has fallen far short of target DNI based largely on the Commission's badly erroneous vessel traffic projections. In the first tariff year, pilots earned just 74% of target DNI. But PSP does not request an interim adjustment to recoup this shortfall, which arguably amounts to a "mere failure of the currently realized rate of return to equal that approved." Rather, PSP is simply

asking that the Commission provide interim relief by funding new pilots that have been approved by BPC and have joined (or will imminently join) PSP's membership.

14. The current tariff assumes (and funds) just 52 full-time pilots. PSP currently has 53 licensed member pilots and that number is soon to increase to 56. These additional pilots were approved by BPC, confer significant benefits on ratepayers (and the public), and are necessary for PSP to fulfill its mandate to provide safe and effective pilotage. Presumably, the Commission did not intend to force PSP's members to subsidize ratepayers by funding additional BPC approved pilots by offsetting against the approved target DNI. Requiring them to do so would be grossly inequitable and impose substantial additional hardship on pilots who have already seen their income suffer greatly under the current tariff.

15. **Standard No. 4. The Commission should review all financial indices as they concern the applicant, including rate of return, interest coverage, earnings coverage and the growth, stability or deterioration of each, together with the immediate and short term demands for new financing and whether the grant or failure to grant interim relief will have such an effect on the financing demands as to substantially affect the public interest:** DNI is the primary financial indicator with respect to PSP's requested interim relief, and it has deteriorated based on changed conditions since the new tariff took effect on January 25, 2021, including the addition and imminent addition of new pilots. PSP has an immediate and short term need for new financing. The need is immediate because PSP has already added a 53rd pilot and further pilot additions are imminent. The demand is short term because the requested interim relief would remain in effect only until the Commission funds a new tariff at the conclusion of the currently pending general rate case. Lastly, failure to grant interim relief will adversely affect the public interest by failing to sufficiently fund the

number of pilots that are necessary to provide the level of safety and service that is required.

Conversely, there can be no credible argument that the funding the modest additional revenue necessary to fund PSP's full pilot corps will have any adverse effect the public interest.

- 16. Standard No. 5. In the current economic climate, the financial health of a utility may decline very swiftly and interim relief stands as a useful tool in an appropriate case to stay off impending disaster. However, this tool must be used with caution and applied only in a case where not to grant would cause clear jeopardy to the utility and detriment to its ratepayers and stockholders. That is not to say that interim relief should be granted only after disaster has struck or is imminent, but neither should it be granted in any case where full hearings can be had and the general case resolved without clear detriment to the utility:** PSP and its members have suffered greatly under the current tariff, which has failed to generate revenue that even approaches the approved target DNI, let alone provide a competitively attractive level of compensation to new pilot candidates. The addition of new pilots that are necessary to maintain service, without commensurate funding, risks lasting damage to PSP and the reputation of Washington's pilotage system. Given the prohibition against retroactive ratemaking, this is not an issue that can be resolved in a general rate case and will irreparably harm PSP and its members if interim relief is not granted. PSP has been significantly underfunded for a year and a half and its members should not be required to subsidize the addition of new pilots that have been authorized BPC and are necessary for PSP to reduce high callback levels that contribute to pilot fatigue while continuing to provide timely service.

- 17. Standard No. 6. Finally, as in all matters, we must reach our conclusions with the statutory charge to the Commission in mind, that is to "regulate in the public interest"**

(RCW 80.01.04). This is our ultimate responsibility and a reasoned judgment must give appropriate weight to all salient factors: As comprehensively detailed in the evidence filed today in support of PSP’s general rate case, the public has an acute interest in maintaining a fully staffed and appropriately funded pilotage system. The increase in the number of pilots that has occurred and is imminent has been authorized by BPC and is necessary to PSP’s continued ability to provide the safest and most efficient pilotage system possible on behalf of the public and ratepayers. The exercise of “reasoned judgment” plainly dictates that interim relief is appropriate to fund these licensees.

IV. PUGET SOUND PILOTS REQUESTS EXPEDITED REVIEW

18. Puget Sound Pilots requests that the Commission establish an expedited procedural schedule that will allow a Commission order regarding interim rate relief to be issued by Aug. 15, 2022.

V. PRAYER FOR RELIEF

19. PSP respectfully requests that the Commission issue an order approving interim rate relief by adjusting the tariff to account for the cost of each new licensee upon admission as a member of PSP. Specifically, PSP requests that the UTC approve an automatic tariff adjuster increasing the existing tariff rate by 1.4% for each new licensee above the currently funded level of 52 licensees and reduce the tariff by 1.4% for each retirement of a licensee provided the number of PSP licensees drops below 52.

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Respectfully submitted this 29th day of June, 2022.

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