



# LEGISLATIVE REPORT ON ESTABLISHING MARINE PILOTAGE TARIFFS

Pursuant to Chapter 107, Laws of 2018, Section 1 (3) (SUBSTITUTE  
SENATE BILL 6519)

June 29, 2021

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## EXECUTIVE SUMMARY

The Utilities and Transportation Commission (Commission or UTC) regulates the rates of investor-owned electric and natural gas utilities, landline telephone companies, solid waste haulers, and private water systems. The UTC is responsible for ensuring vital services are safe, available, reliable, and fairly priced.<sup>1</sup>

In 2017, the Joint Transportation Committee of the Washington State Legislature (JTC) reviewed the procedures for rate-setting for marine pilots in Washington. In a report issued in January 2018, the JTC recommended that rate-setting authority be transferred from the state Board of Pilotage Commissioners (BPC) to the UTC.

In 2018, the Legislature passed Substitute Senate Bill (SSB) 6519, codified as RCW 88.16.055, transferring marine pilotage rate-setting authority from the Board of Pilotage Commissioners (BPC) to the UTC effective July 1, 2019.<sup>2</sup> SSB 6519 also required the Commission by July 1, 2020, to provide a report to the Governor and the transportation committees of the Legislature regarding “matters pertaining to establishing tariffs under [RCW 88.16.055],” including “a comparison of the process and outcomes in relation to the recommendations made in the January 2018 joint transportation committee Washington state pilotage final report and recommendations.”<sup>3</sup>

The Commission has successfully implemented the transfer of authority for pilotage tariff-rate setting. On May 3, 2019, the Commission adopted administrative rules for rate regulation of pilotage services in Chapter WAC 480-160, and on Dec. 4, 2020, the Commission completed its first general rate case under chapter 480-160 WAC for compulsory pilotage services in Puget Sound, with new tariff rates in effect as of Jan. 25, 2021.

In this report, the Commission identifies that the recommendations and expected outcomes outlined in the 2018 JTC pilotage report are being met, and that the Commission-administered process has the potential to improve future relationships between the regulated industry and its customers. The transfer of rate-making authority to the Commission also supports the BPC’s mission by removing the contentious issue of tariff rate-setting from its oversight of the safe administration of compulsory pilotage.

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<sup>1</sup> The Commission also regulates the safety practices of railroads and pipeline companies, as well as motor carriers operating in Washington. Motor carriers under UTC jurisdiction include household goods movers, airporters, and charter buses.

<sup>2</sup> Laws of 2018, Chapter 107.

<sup>3</sup> RCW 88.16.055(3).

## INTRODUCTION

In 2018, the Legislature passed SSB 6519, codified as RCW 88.16.055, which transferred marine pilotage rate-setting authority from the BPC to the UTC effective July 1, 2019.<sup>4</sup> SSB 6519 also required the Commission to provide by July 1, 2020, a report to the Governor and the transportation committees of the Legislature regarding “matters pertaining to establishing tariffs under [RCW 88.16.055],” including “a comparison of the process and outcomes in relation to the recommendations made in the January 2018 joint transportation committee Washington state pilotage final report and recommendations.”<sup>5</sup>

On June 29, 2020, the UTC provided to the Governor and Legislature a status report in which the Commission explained that, due to the ongoing general rate case for compulsory pilotage services in Puget Sound, it would need additional time to complete the report required by RCW 88.16.055(3).<sup>6</sup> The Commission received feedback from the Legislature to submit a full report within one year of the status report.

The UTC hereby submits this report to the Governor and the transportation committees of the Legislature to fulfill its responsibilities under RCW 88.16.055(3).

## BACKGROUND

In 2017, the Legislature passed into law 2ESSB 5096, making transportation appropriations for the 2017-2019 fiscal biennium, including appropriations of \$200,000 for the Washington State Joint Transportation Committee (JTC) to conduct a study of marine pilotage in Washington state.<sup>7</sup> The JTC commissioned the study to focus on identifying best practices in the areas of tariff and fee setting, determining pilot workload, pilot recruitment, training, selection, and increasing pilot diversity. The study was completed, and its findings were reported to the legislature in January 2018 (hereafter “2018 JTC Report”).

The 2018 JTC Report found that while the Washington State Pilotage Act (Pilotage Act) required the BPC to fix tariffs annually for pilotage services, the Act provided very little guidance or rationale for the ratemaking process. The report further found that the BPC was making decisions on tariff adjustments with “no clearly defined methodology for the tariff and fee rate-

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<sup>4</sup> Laws of 2018, Chapter 107.

<sup>5</sup> RCW 88.16.055(3).

<sup>6</sup> Extenuating circumstances included challenges associated with the COVID-19 pandemic and the timing of the first Puget Sound pilotage district tariff filing in November 2019.

<sup>7</sup> The JTC commissioned the study and began examining current practices in the marine pilotage industry through its consultants, Community Attributes, Inc., and Gleason & Associates.

setting process,”<sup>8</sup> and recommended a transfer of rate-setting authority from the BPC to the UTC. The report described a transfer of authority to the UTC as “the single most effective action the Legislature can take to improve rate-setting in Washington state.”<sup>9</sup>

In 2018, the Legislature passed SSB 6519, codified as RCW 88.16.055, in effect adopting the 2018 JTC Report’s recommendation to transfer marine pilotage rate-setting authority from the BPC to the Commission. The Commission assumed this authority effective July 1, 2019.

In addition to transferring rate-setting authority, RCW 88.16.055(3) directed the Commission to report to the Governor and the transportation committees of the Legislature on matters related to establishing the tariffs and comparisons of the process and outcomes to the recommendations made in the 2018 JTC Report.

## MATTERS PERTAINING TO ESTABLISHING MARINE PILOTAGE TARIFFS

### 1. Rulemaking

Chapter 81.116 RCW, codified in 2018, transferred the pilotage tariff rate-setting responsibilities from the BPC to the Commission, established related duties for the Commission, and instituted tariff filing requirements. To ensure timely implementation of the Commission’s rate-setting duties with respect to marine pilotage services, RCW 81.116.900 authorized the Commission to adopt rules under RCW 81.116.020 prior to July 1, 2019.

The Commission conducted a rulemaking between August 2018 and May 2019 to establish the Commission’s administrative rules with respect to setting rates for marine pilotage services, including rules for general rate proceedings and the information required to be submitted in such proceedings. The rulemaking also addressed the role of the Grays Harbor port district’s recommendations in the Commission’s rate-setting process.

The Commission conducted an extensive outreach and public involvement effort to ensure rules were informed by potentially impacted and interested stakeholders.

On Aug. 10, 2018, in Docket TP-180402, the Commission filed a CR-101 Preproposal Statement of Inquiry to initiate a rulemaking pursuant to RCW 81.116.900. That same day, the Commission

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<sup>8</sup> Washington State Pilotage Final Report and Recommendations, Washington State Joint Transportation Committee, January 18, 2018, page 68.

<sup>9</sup> Washington State Pilotage Final Report and Recommendations, Washington State Joint Transportation Committee, January 18, 2018, page IX and 68.

also issued a Notice of Opportunity to File Written Comments on Proposed Rules.<sup>10</sup> The Commission received written comments from three interested entities: Puget Sound Pilots (PSP), Holland America (Holland), and Pacific Merchant Shipping Association (PMSA).

On Sept. 19, 2018, the Commission issued a Notice of Workshop set for Oct. 19, 2018. The Commission used both written comments and comments received during the workshop to develop a second set of discussion draft rules.

On Jan. 18, 2019, the Commission published its second draft rules and issued a Notice of Opportunity to Submit Written Comments and a Notice of Opportunity to Respond to Small Business Impact Statement (SBEIS) to all stakeholders interested in the rulemaking, including all marine pilots in Washington state, PSP, PMSA, the Port of Seattle, and the Port of Grays Harbor. The Commission received no responses to the SBEIS questionnaire. The Commission conducted additional outreach, including multiple telephone and in-person conversations with industry stakeholders, but was unsuccessful in its efforts to gather information related to cost impacts. PSP, Holland, and PMSA submitted further comments to the Commission in response to the second draft rules.

On March 11, 2019, the Commission filed a Notice of Proposed Rulemaking (CR-102) with the Office of the Code Reviser. Subsequently, the Commission issued a Notice to all interested persons, providing an opportunity to comment on the proposed rules, and setting the adoption hearing for April 24, 2019.

On May 3, 2019, the Commission adopted the marine pilotage rate-setting rules in General Order R-596, Order Amending and Adopting Rules Permanently. The Commission adopted the rules prior to the effective date of the Commission's authority for rate setting, allowing all persons involved in the marine pilotage rate setting process to become familiar with the rules before that date.

## 2. Tariff Rate-Setting Proceedings

Washington state is one of 24 coastal states in the United States that regulate marine pilotage through state licensing, and that are responsible for setting tariff rates that pilots may charge for their services. There are two pilotage districts in Washington, Puget Sound and Grays Harbor. The Puget Sound district is defined as including "all the waters of the state of

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<sup>10</sup> Docket TP-180402.

Washington inside the international boundary line between the state of Washington, the United States and the province of British Columbia, Canada and east of one hundred twenty-three degrees twenty-four minutes west longitude.”<sup>11</sup> This district covers more than 7,000 square miles, 12 ports, and over two dozen anchorages. The Grays Harbor district is defined as including “all inland waters, channels, waterways, and navigable tributaries within Grays Harbor and Willapa Harbor.”<sup>12</sup> The Grays Harbor district covers approximately 280 square miles.

Each pilotage district in Washington state is served by a single pilotage service; the Port of Grays Harbor provides pilotage service within the Grays Harbor pilotage district, and Puget Sound Pilots (PSP) provides pilotage service within the Puget Sound pilotage district.

In November 2019, the Port of Grays Harbor and PSP each filed with the Commission proposed tariffs for pilotage service. These were the first two pilotage rate proceedings before the Commission. Each proceeding is discussed in more detail below.

a. PORT OF GRAYS HARBOR

On Nov. 11, 2019, the Port of Grays Harbor (the Port) filed its proposed tariff for pilotage service with the Commission in Docket TP-190965, requesting an increase in tariff rates. As part of its filing, the Port provided its 2020 pilotage budget, a five-year capital spending plan, and its prior-year financial statement. Prior to filing with the Commission, the Port released the proposed schedules and tariff to the public on Oct. 8, 2019, at a public hearing at the Port’s offices.

On Nov. 12, 2019, the Port held a public hearing where the public was provided the opportunity to comment on the proposed tariff. The Port’s Commissioners reviewed the proposed amendments adopting a resolution to approve, and recommending the 2020 pilotage tariff, rates, and rules of service to the Commission for its approval.

In its filing with the Commission, the Port recommended a 15% increase in the draft tonnage, boarding, and harbor-shift rates. The increased rates were attributed to decreased vessel traffic, the addition of a pilot trainee, and the purchase of a new pilot boat.

The Commission’s Regulatory Services staff (staff) reviewed the Port’s filing, and the Commission considered the filing during its open meeting held on Dec. 19, 2019. The Commissioners took no action, thereby allowing the tariff pages filed by the Port to become effective Jan. 1, 2020, by operation of law.

While RCW 81.116.060 authorizes the Commission to recover the reasonable costs it incurs when establishing or amending the tariff rates for pilotage service, the Commission determined

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<sup>11</sup> RCW 88.16.050 (1).

<sup>12</sup> RCW 88.16.050 (2).

the costs it incurred for the Port's proceeding were relatively minor and, as such, did not include Commission costs in the Port's authorized tariff rates.

b. PUGET SOUND PILOTS

On Nov. 19, 2019, PSP submitted an initial tariff filing with the Commission in Docket TP-190976. PSP requested a three-year rate plan with proposed rates for the first year to become effective on Oct. 23, 2020. PSP's proposal requested a total revenue increase of 39.9% over the three-year rate plan period. On Nov. 21, 2019, the Commission suspended the tariff and set the matter for adjudication. The PSP tariff filing was the Commission's first adjudicated pilotage rate proceeding.

The Commission assigned the case to Administrative Law Judge Michael Howard, who established the procedural schedule set forth in Table 2 below. The schedule was later amended due to COVID considerations, as also set forth in Table 2.

In addition to the Commission's regulatory staff, three parties participated in the adjudication: PSP, PMSA, and Pacific Yacht Management (PYM). There were several contested issues in the case, including pilot workload and vessel traffic forecasts, PSP's funded retirement program, callback days, recruitment and pilot compensation package, travel reimbursement, and whether to include a service time charge.

The Commission held a two-day evidentiary hearing on Aug. 12 and 13, 2020, with all three Commissioners in attendance. Parties submitted post-hearing briefs on Sept. 3, 2020, and reply briefs on Sept. 17, 2020. The Commission issued its final order in the case on Nov. 25, 2020.

**Table 1. Key Dates of First Tariff Filing:**

| <b>EVENT</b>   | <b>DATE</b>             |
|--|-------------------------|
| PSP Filed Initial Proposed Tariff, Testimony and Exhibits  | <b>Nov. 19, 2019</b>    |
| Commission Entered Order 01, Suspending Tariff Filing and Setting Matter for Adjudication  | <b>Nov. 21, 2019</b>    |
| Prehearing Conference  | <b>Dec. 12, 2019</b>    |
| Prehearing Conference Order 02 Issued, Establishing Procedural Schedule, Granted PMSA Petition to Intervene  | <b>Dec. 17, 2019</b>    |
| PYM File with Commission a Late-Filed Petition to Intervene  | <b>Jan. 14, 2020</b>    |
| Commission Granted PYM Petition to Intervene   | <b>Jan. 31, 2020</b>    |
| Staff and Intervenor Response Testimony and Exhibits   | <b>April 22, 2020</b>   |
| PSP Filed Motion to Request Extension of Procedural Schedule due to impacts of Covid-19 Pandemic   | <b>March 26, 2020</b>   |
| Commission Granted PSP Extension Request, Modifying Procedural Schedule (as shown in Table 2 below)  | <b>March 31, 2020</b>   |
| Evidentiary Hearing Conducted, Allowing for Parties to Cross-Examine Witnesses and Commissioners to Question Witnesses (hearing was conducted completely remotely in accordance with all COVID-19 protocols and precautions) | <b>Aug. 12-13, 2020</b> |
| Commission Issued Order 09, Final Order in Docket TP-190946, Establishing New Rates, and Requiring Additional Compliance Items Related to Issues Raised During Proceedings (found in Appendix B)                             | <b>Nov. 25, 2020</b>    |

|   |                      |
|---|----------------------|
| Commission Allowed Revised Tariff Sheets Submitted to PSP and Reviewed by Regulatory Services Staff to Go into Effect | <b>Jan. 25, 2021</b> |
|---|----------------------|

**Table 2. Modified Procedural Schedule Due to COVID-19 Impacts:**

| <b>EVENT</b>   | <b>PREVIOUS DATE</b>                      | <b>NEW DATE</b>  |
|--|---|--|
| Staff and Intervenor Response Testimony and Exhibits                                       | <b>April 22, 2020</b>                     | <b>May 27, 2020</b>  |
| PSP Rebuttal Testimony and Exhibits; Staff and PMSA Cross-Answering Testimony and Exhibits | <b>May 26, 2020</b>                       | <b>July 8, 2020</b>  |
| Discovery Deadline – Last Day to Issue Data Requests                                       | <b>June 15, 2020</b>                      | <b>July 30, 2020</b>   |
| Exhibits List, Cross-Examination Exhibits, Witnesses List, Time Estimates, Exhibits Errata | <b>June 22, 2020</b>                      | <b>Aug. 5, 2020</b>  |
| Evidentiary Hearing  | <b>June 29 and 30, 2020, at 9:30 a.m.</b> | <b>Aug. 12, 2020, at 8:30 a.m., continuing Aug. 13, 2020</b> |
| Simultaneous Post-Hearing Briefs   | <b>July 20, 2020</b>                      | <b>Sept. 3, 2020</b>   |
| Simultaneous Reply Briefs  | <b>Aug. 3, 2020</b>                       | <b>Sept. 17, 2020</b>  |
| Suspension Date  | <b>Oct. 23, 2020</b>                      | <b>Dec. 4, 2020</b>  |

**c. Ongoing Efforts**

At the conclusion of PSP’s initial general rate case, the Commission authorized a two-year rate plan with an overall increase in PSP revenue of 4%.<sup>13</sup> In addition to the authorized increase in revenue and a corresponding increase in tariff rates, the Commission required the parties to participate in two separate collaborative efforts. First, the Commission ordered PSP to initiate discussions among parties for the purpose of developing a plan to transition to a fully funded, defined-benefit retirement plan and to implement full accrual accounting for retirement expenses.<sup>14</sup> The order sets the expectation that PSP will conduct a comprehensive stakeholder process, including a series of workshops facilitated by a mutually acceptable third-party, and

<sup>13</sup> *WUTC v. Puget Sound Pilots*, Docket TP-190976, Order 09 (November 25, 2020), at 6:26, 7:27.

<sup>14</sup> Appendix B page ii (*WUTC v. Puget Sound Pilots*, Docket TP-190976, Order 09 (November 25, 2020)) (Order 09).

requires PSP to include any agreements, recommendations, or contested issues arising from this process in the initial filing in its next general rate case.

Second, the Commission ordered the UTC's Regulatory Services Staff to lead a technical workshop for parties and other stakeholders on rate of return rate-setting methodology in the context of pilotage services.<sup>15</sup> The workshop will include a discussion about developing an appropriate revenue requirement and total distributable net income, and an analysis of the feasibility of applying rate of return methodologies used in utility company rate setting to pilotage ratemaking. The order directed the parties to conduct the workshop on a similar timeline to the retirement plan workshop to inform the Commission findings reported here. However, due to the complexity of the issues in both technical workshops and participants' varying schedules, this has not yet occurred, but is tentatively scheduled for completion by the end of the 2021.

## COMPARISON OF COMMISSION RATE-SETTING PROCESS AND OUTCOMES IN RELATION TO THE RECOMMENDATIONS OF 2018 JTC REPORT

RCW 88.16.055 requires the Commission to include in this report to the Governor and the transportation committees of the Legislature a comparison of the Commission's pilotage rate-setting process and outcomes in relation to the recommendations included in the 2018 JTC Report.

The 2018 JTC Report's recommendations and the expected outcomes are summarized here:

1. Transfer authority to the UTC to achieve an analytically driven rate-setting process.
  - a. *Expected outcomes:* All parties will benefit from a process that is rules-based, enforceable, predictable, rigorous, and transparent.
2. Tariff and fee rate-setting should be considered only when requested by stakeholders.
  - a. *Expected outcomes:* Rate-setting process will reflect economic necessity rather than arbitrary timelines. Stakeholders are incentivized to arrive at mutually beneficial solutions.
3. An evidentiary based process that is developed and administered by individuals with relevant economic expertise and no conflicts of interest. Consider use of automatic adjusters or formulaic approach to rate-setting.
  - a. *Expected outcomes:* More predictable and transparent tariff and fee rate-setting process based on defined methodology and independent, objective analysis.
4. Align data submission with tariff and fee rate-setting process.

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<sup>15</sup> Docket No. TP-190976, Order 09 Final Order Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing, page. iv.

- a. *Expected outcomes:* Better alignment between data submission and decision-making on tariff and fee rate adjustment petitions.
5. Clearly defined methodology regarding capital expenses and financing.
  - a. *Expected outcomes:* Transparency and predictability regarding capital expense financing.

The following sections will discuss the Commission's process and outcomes in relation to the recommendations and expected outcomes in the 2018 JTC Report.

Commission Staff conducted extensive outreach with stakeholders after the completion of the PSP general rate case as a core component in evaluating whether the Commission's process achieved the expected outcomes. Staff reached out to all parties to the general rate case and numerous stakeholder groups that are interested in the sound application of compulsory and non-compulsory state licensed pilotage provisions, as described in RCW 88.16.<sup>16</sup>

Staff met individually with each of the following stakeholders or entities to discuss the recommendations made in the 2018 JTC Report as they related to pilotage rate-setting, and the outcomes from the first rate-setting process.

- Puget Sound Pilots (party to rate case)
- Pacific Merchant Shipping Association (party to rate case)
- Pacific Yacht Management (party to rate case)
- Port of Grays Harbor
- UTC Regulatory Services Staff (party to rate case)
- The Board of Pilotage Commissioners<sup>17</sup>
- U.S. Superyacht Association
- Northwest Seaport Alliance
- Washington Public Ports Association
- Washington Environmental Council

Staff also reached out to the Puget Sound Restoration Fund, Maritime Institute of Technology and Graduate Studies, and Women Offshore to offer an opportunity to meet and discuss. These three stakeholders declined meetings but did provide written responses that were informative for the purpose of this report.

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<sup>16</sup> RCW 88.16.070 exempts certain vessels from compulsory pilotage services. If exempted vessels hire pilots for noncompulsory pilotage services, they are subject to rates and provisions approved by the Commission as required by RCW 88.16.070(3).

<sup>17</sup> Consistent with RCW 81.116.020(5)(a) the Commission received assistance from the BPC Executive Director and Board Chairperson during the rate case.

[Recommendation 1: Transfer authority to the UTC to achieve an analytically driven rate-setting process.](#)

This recommendation was adopted by the Legislature through SSB 6519 and codified as RCW 88.16.055. On May 3, 2019, the Commission adopted administrative rules establishing the rate-setting process for pilotage services, WAC 480-160.

- a. [Expected outcomes](#): A rate-setting process that is rules based, enforceable, predictable, rigorous, and transparent.

As the 2018 JTC Report identified, the Commission’s rate-setting process “provides the structure, rules, expertise, and rigor necessary to achieve an analytically driven rate-setting process.”

Overall, parties to the PSP rate case were pleased with the analytically driven nature of the Commission’s process and appreciated the need to present arguments supported by facts and data submissions that were well-aligned with the process.

There was also overwhelming agreement that the Commission has the relevant financial and rate-setting expertise to establish tariff rates for compulsory pilotage and that the Commissioners, as decisionmakers, do not have a conflict-of-interest. This greatly benefits the process and helps ensure that decisions are based on the facts of the case and guided by sound policy and financial expertise.

The Commission recognizes that the rate-setting process is much more complex than the previous BPC-administered process and that complexity may create difficulty for intervening parties who are unable to obtain legal representation. To ensure unrepresented parties can meaningfully participate in the process, staff will continue to be a resource for pro se intervening parties during rate cases. Administrative law judges will also continue to provide flexibility to unrepresented parties as the circumstances dictate, within the requirements of statute and rule, while ensuring that all parties are afforded due process. In addition, the Commission will include an opportunity for public comment, both written and oral, in future rate cases to ensure all interested stakeholders have an ability to share their perspectives.

Stakeholders did identify an area related to the process that may benefit from additional attention in the future. Currently, Chapter 81.116 RCW does not allow for the protection of commercial or proprietary information from public disclosure, such as that allowed under 81.77.210 RCW or 80.04.095 RCW. Providing similar statutory language for marine pilotage would protect records containing confidential commercial information from public disclosure. This may allow parties to a pilotage rate case to submit confidential evidence and data that would benefit the overall outcome of the rate-setting process.

The Commission will continue to explore this issue with stakeholders during the intervening period between rate cases to assess whether legislative action is needed.

[Recommendation 2: No annual requirement for rate-setting.](#)

One of the issues the 2018 JTC Report identified was the requirement in the Pilotage Act for the BPC to “*annually fix the pilotage tariffs for pilotage services.*” The JTC found that this annual requirement “incentivizes stakeholders to continuously advocate, either explicitly or implicitly, for adjustments. This ongoing advocacy for rate adjustments serves as a distraction and limits discussion on other important items under BPC jurisdiction, such as safety.”

Stakeholders appreciate the lack of an annual rate-setting requirement in RCW 81.116 or WAC 480-160. However, several questioned the ability of the Commission-administered process to respond to a rapid change in the maritime economy. The Commission does have the flexibility in statute and rule to consider a revised tariff filed by any person that demonstrates a substantial interest and sets an effective date at least one year after the date that the current tariff became effective. In addition, RCW 81.116.030(2)(c) allows for consideration of automatic or periodic rate adjustment mechanisms. This flexibility allows the Commission to consider tariff filings submitted in response to abrupt and significant economic changes in the industry.

For example, the Commission regularly revises tariffs for solid waste collection companies when the disposal fees charged to regulated companies at solid waste transfer facilities and landfills are increased. This is often accomplished over a period of weeks through the UTC’s open meeting process rather than through a more time consuming and complex general rate case proceeding.<sup>18</sup>

- a. [Expected outcomes:](#) Rate-setting process will reflect economic necessity rather than arbitrary timelines. Stakeholders are incentivized to arrive at mutually beneficial solutions.

The Commission’s process in general rate proceedings for all industries incentivizes stakeholders to arrive at mutually beneficial solutions for many of the issues addressed in a general rate case. As in PSP’s general rate case, the Commission requires all parties to attend at least one settlement conference before the evidentiary hearing.<sup>19</sup> The Commission’s rules encourage alternative dispute resolution among the parties to a proceeding, including mediation, arbitration and settlement.<sup>20</sup> The Commission and the parties to the rate case are

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<sup>18</sup> The UTC holds open meetings on a regular schedule, twice a month, and that schedule is available to the public on the UTC’s website.

<sup>19</sup> See *WUTC v. Puget Sound Pilots*, Docket TP-190976 Order 02 (December 17, 2019).

<sup>20</sup> See WAC 480-07-700 through -750.

optimistic the new rate-setting process will result in improved relationships and that increased trust and mutually beneficial outcomes will be possible in future rate cases.

[Recommendation 3](#): An evidentiary based process that is developed and administered by individuals with relevant economic expertise and no conflicts of interest. Consider use of automatic adjusters or formulaic approach to rate-setting.

The Commission's authorizing statutes (RCW 80.01.050 and RCW 80.01.060) provide for evidentiary based hearings and investigations following the state Administrative Procedure Act, and in RCW 80.01.020, specifically prohibit any commissioner or staff having any financial or other interest in a company subject to the Commission's jurisdiction. Further, Commission statutes and rules allow for the use of automatic adjusters and formulaic mechanisms in setting tariff rates.<sup>21</sup> In fact, the Commission's final order in PSP's recent general rate case includes an automatic increase of 2.3% in pilot distributive net income during the second year of the rate effective period. In addition, the Commission has used periodic rate adjustment mechanisms in other industries, including in the regulation of pipeline rates, and solid waste collection.<sup>22</sup>

- a. [Expected outcomes](#): More predictable and transparent tariff and fee rate-setting process based on defined methodology and independent, objective analysis.

Stakeholders reported that the initial PSP general rate case was much more predictable and transparent than the previous rate setting process administered by the BPC. They noted that the decision-making avoided conflicts of interest and was highly objective because, unlike the BPC process, none of the Commissioners have a material interest in the outcome, nor are they members of a party to the rate case. Stakeholders identified several of the expenses and cost drivers included in PSP's revenue requirement calculation as good candidates for automatic adjustment based on various indicators or a formulaic mechanism. The Commission is optimistic that as parties become more familiar with the UTC's tariff and hearing processes, they will jointly propose a tariff rate-setting methodology that relies on automatic adjusters and proceed in a non-contested manner, possibly through the open meeting process.

[Recommendation 4](#): Align data submission with tariff and fee rate-setting process.

The 2018 JTC Report found that the process for submitting data with respect to rate adjustments at the BPC lacked transparency, clarity, and an established and enforceable timeline.<sup>23</sup>

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<sup>21</sup> See RCW 81.116.030, 81.77.160, 81.108.040,

<sup>22</sup> See Docket # TG-210340, TO-031973, TG-990525

<sup>23</sup> 2018 JTC Report page 72.

- a. *Expected outcomes:* Better alignment between data submission and decision-making on tariff and fee rate adjustment petitions.

The Commission's tariff rate-setting process requires parties to submit data and evidence to support their arguments and testimony and provides an opportunity for other parties to review that data and evidence, ask questions of the party offering the information through discovery, and contest it either in writing or at hearing. Table 2 above identifies the established timeline for discovery and the filing of testimony and evidence during PSP's general rate case.

Parties to the rate case agree that the process and expectations for data submission are transparent and clear. In addition, they recognize the benefit of rate-making decisions based on submitted testimony, evidence, and verifiable data.

The Commission recognizes, however, that the discovery process during a general rate case can result in numerous data requests between parties. The Commission is optimistic that, as pilotage tariff rate-setting cases become more familiar to the parties, the data requests will become fewer and more narrowly focused.

#### Recommendation 5: Clearly Defined Methodology Regarding Capital Expenses and Financing.

- a. *Expected outcomes:* Transparency and predictability regarding capital expense financing.

While the transfer of rate setting authority to the Commission addresses this recommendation, the first pilotage rate case filed with the Commission did not propose to recover any major capital expenditures or consider financing methodologies for such expenses. This was evident in the outreach discussions with the parties following the rate case, in which they were unaware of the various approaches the Commission has approved for addressing capital needs and financing.

After decades of rate-setting proceedings, the Commission is well versed in setting rates that ensure regulated companies have access to financial resources for capital expenses and planning, but also protect the ratepayers from unnecessary or imprudent costs.

There does appear to be general agreement among stakeholders that the sound application of compulsory pilotage benefits from pilots having access to reliable pilot boats with up-to-date technology and safety features. Further, it appears that parties to the rate case would consider a specific sunseting tariff rate for a capital expenditure of new pilot boats under reasonable conditions.

The Commission will reach out to stakeholders to gauge their interest in convening a workshop about the various approaches to addressing capital expenses and planning that have been approved in other regulated industries. The workshop could include a robust discussion of PSP's

near-term and long-term future capital needs and possible approaches that could be proposed in future tariff filings. It is possible that such a workshop could result in a general agreement on how to proceed with capital financing for new pilot boats that could be approved through a supplemental tariff filing at an open meeting. This workshop would be in addition to the Staff-led technical workshop to address rate of return methodology required by Order 09 and referenced above.

## CONSISTENCY WITH PILOTAGE ACT

Although not specifically required by RCW 88.16.005, several stakeholders expressed a desire for the Commission, through the rate-setting process, to seek consistency with the policies and legislative intent of compulsory pilotage in the Pilotage Act. The Act identifies the need for highly skilled and licensed pilots to ensure against the loss of life, damage to property, and harm to the environment, and to ensure Washington continues to be a competitive market for waterborne commerce from other ports and nations.

The guiding principle of establishing fair, just, reasonable, and sufficient rates is consistent with the Pilotage Act's legislative declaration and policy intent. Further, the Commission is mindful that the Legislature only transferred rate-setting authority, reserving all other regulation of marine pilotage to the BPC. In Order 09, the Commission carefully distinguished between its role as the rate-setter and the role of the BPC as the safety regulator.<sup>24</sup> Nonetheless, it is premature to gauge the impact of the Commission's process and Order 09 on successful implementation of the Pilotage Act after only one contested rate case. The Commission recommends that the parties consider the degree to which the Commission has successfully implemented the Pilotage Act through its processes in PSP's next general rate case. This will give parties an opportunity to present fact-based arguments and witness testimony regarding this issue.

## CONCLUSION

The Commission-administered tariff rate-setting process is consistent with the recommendations outlined in the 2018 JTC Report. The process is analytically driven and lacks an annual requirement for tariff rate-setting. The Commission's fact-based and evidentiary-driven process is aligned with recommendation for a clearly defined and process-based methodology. Finally, the Commission-administered process allows for certainty regarding significant capital expenses and financing.

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<sup>24</sup> See, e.g., Order 09 ¶ 86 ("Accordingly, we do not determine a TAL [Total Assignment Level] for purposes of safety or fatigue management, as these issues fall squarely within the BPC's purview.").

The stakeholders also generally agree that the transfer of rate-setting authority to the Commission has the potential to improve the relationship between the regulated industry and its customers, possibly leading to mutually beneficial solutions resulting from both the Commission-administered process and the non-rate-setting issues considered by the BPC.

From the Commission's experience in regulating several industries, such a result can be achieved, however it may take some time and effort by all parties over the course of several proceedings, Commission required workshops, and discussions outside of the adjudicative rate-setting process.

## Appendix A:

### Table of Amended and Adopted Rules with Adoption of Marine Pilotage Rate Setting

|       |   |
|-------|---|
| Amend | WAC 480-07-140 General requirements for submitting documents to the Commission.       |
| Amend | WAC 480-07-500 General rate proceedings—Statement of policy.                          |
| Amend | WAC 480-07-505 General rate proceedings—Definition—Tariff suspension.                 |
| Adopt | WAC 480-07-525 General rate proceedings—Marine pilotage services in Puget Sound.      |
| Amend | WAC 480-07-540 General rate proceedings—Burden of proof.                              |
| Amend | WAC 480-07-700 Alternative dispute resolution.  |
| Adopt | WAC 480-160-100 Purpose of chapter.   |
| Adopt | WAC 480-160-005 Application.  |
| Adopt | WAC 480-160-010 Resolving disputes about the meaning of these rules.                  |
| Adopt | WAC 480-160-020 Definitions.  |
| Adopt | WAC 480-160-030 Change of address, telephone number, or email.                        |
| Adopt | WAC 480-160-040 Exemptions from rules in chapter 480-160 WAC.                         |
| Adopt | WAC 480-160-050 Records retention.  |
| Adopt | WAC 480-160-060 Reporting requirements.   |
| Adopt | WAC 480-160-070 Commission compliance policy.   |
| Adopt | WAC 480-160-080 Fees.   |
| Adopt | WAC 480-160-090 Pilots must charge only approved rates.                               |
| Adopt | WAC 480-160-100 Tariffs and rates—General.  |
| Adopt | WAC 480-160-110 Tariffs—Changes must be identified.                                   |
| Adopt | WAC 480-160-120 Changing Commission-published tariff—Puget Sound pilotage district.   |
| Adopt | WAC 480-160-130 Changing Commission-published tariffs—Grays Harbor pilotage district. |
| Adopt | WAC 480-160-140 Tariffs—Approval.   |
| Adopt | WAC 480-160-150 Tariffs—Suspension by the Commission.                                 |
| Adopt | WAC 480-160-160 Complaints—Rates and charges.   |

## Appendix B

### Order 09, Final Order Rejecting Tariff Sheets; Authorizing and Requiring Compliance Filing

\* Double-click object to open document.

Service Date: November 25, 2020

BEFORE THE WASHINGTON  
UTILITIES AND TRANSPORTATION COMMISSION

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND PILOTS,

Respondent.

DOCKET TP-190976

ORDER 09

FINAL ORDER REJECTING TARIFF  
SHEETS; AUTHORIZING AND  
REQUIRING COMPLIANCE FILING

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

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

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

## Appendix C

### Amended Compliance Tariffs for Years One and Two of Two-Year Rate Plan

\*Double-click objects to open documents.



## PUGET SOUND PILOTAGE TARIFF

### PSP TARIFF NO. 1

**Naming rates, charges, and regulations  
governing the provision of Marine Pilotage  
Services  
in the Puget Sound**

**Issued by:**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION**

**621 Woodland Square Loop S.E.  
Lacey, Washington 98504-7250**

**Issue Date: January 12, 2021**

**Effective Date: January 25, 2021**

### Puget Sound Pilotage Rates

#### Item 300 – Inter-Harbor Vessel Movements.

All inter-harbor vessel movement shall be assessed a Tonnage Charge and a Service Time Charge.

The Tonnage Charge shall be based on the Vessel’s International Gross Tonnage.

| Tonnage Charge  | Rate          |                 |
|---|---------------|-----------------|
| Gross Tonnage up to and including 20,000 tons:              | (A) \$1428.00 | flat rate, plus |
| Gross Tonnage over 20,000 up to and including 50,000 tons:  | (A) \$.0664   | per ton Plus    |
| Gross Tonnage over 50,000 up to and including 100,000 tons: | (A) \$.0614   | per ton Plus    |
| Gross tonnage over 100,000 tons:                            | (A) \$.0564   | per ton         |

#### Service Time Charge

Service Time Charges for Inter-Harbor Vessel Movements shall consist of an hourly charge commencing at Order Time and concluding at the time the pilot Steps Ashore, rounded to the nearest hour, with a two-hour minimum charge, at the following rate:

(A) \$247.75 per hour

#### Item 310 – Harbor Shifts

Harbor Shifts shall be assessed a Harbor Shift Charge plus a Service Time Charge.

| Harbor Shift Charge                            | Rate          |
|--|---------------|
| Vessels less than 231.65 meters Length Overall | (A) \$1223.30 |
| Vessels 231.65 meters Length Overall and over  | (A) \$1428.00 |