

August 7, 2024

Chair Sheri Tonn
Washington State Board of Pilotage Commissioners
2901 Third Ave., Ste 500
Seattle, WA 98121

Re: Rebuttal to “PSP Proposal for Number of Pilots” Submitted July 10, 2024

Dear Chair Tonn and Commissioners,

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), we appreciate the opportunity to submit comments in rebuttal to the submission of July 10, 2024 by the Puget Sound Pilots (PSP) regarding “PSP’s Proposal for Number of Pilots.” Respectfully, the Board must reject the PSP Proposal, as it fails to provide the verifiable evidence required to implement the Pilotage Act requirements of how “best to calculate an optimized and efficient pilotage system”. Without the basic components laid out by the WAC upon which it could make findings to support a change in the number of pilots, or a description of the best calculations necessary to optimize pilotage operations, the Board must maintain the current number of pilots.

WAC 363-116-065 (1) requires this Board “from time to time” to “set the number of pilots to be licensed in each pilotage district of the state **that is best calculated to optimize** the operation of a safe, fully regulated, **efficient**, and competent pilotage service.” (emphasis added)

WAC 363-116-05 (2) lists factors for consideration in setting the number of pilots, including: “(a) ... **efficient** and regulated pilotage for vessels; ... (c) The lead time necessary to select and train new pilots; (d) Regional maritime economic **outlook**, including without limitation: Current economic **trends** in the industry, **fluctuations** in the number of calls, the types of assignments, the size of vessels, the **cyclical nature** of the traffic and whether traffic is increasing or decreasing and the need to minimize shipping delays; (e) **Workload**, assignment preparation and rest needs of pilots; (f) **Trends** in size of piloted vessels; ... (h) **Anticipated** retirements;” (emphasis added)

PSP’s submission does not address the WAC optimization or efficiency requirements, does not offer a calculation of optimization, does not provide complete economic outlooks, does not provide any workload analysis, and generally fails to provide sufficient evidence with respect to the many WAC factors to be considered. Therefore, we advise the Board to avoid taking any action to add pilots based on the PSP submission, because of its lack of WAC compliance. Should the Board act in reliance on the PSP submission, and/or without WAC relevant findings based on verifiable facts or evidence, then such action would also be nearly *per se* arbitrary and capricious. PMSA hereby advises the Board that it reserves all rights in this matter and recommends against an action taken without substantive evidence-based findings to justify an action fully consistent with WAC 363-116-065.

PSP 2024 Proposal Inconsistent With PSP 2023 Proposed Optimal, Efficient, and Safe Pilotage

The facts demonstrate that the current number of pilots, 56, is more than adequate to maintain an optimized and efficient pilotage service. PSP agreed as late as 2023, in its most recent filing with the Washington Utilities & Transportation Commission, when it submitted sworn testimony which “proposes an increase to the number of funded pilots, from 52 to 56,” for a test year with 7,483 assignments. (see *UTC v. Puget Sound Pilots*, TP-220513, Final Order 09, August 10, 2023 (¶27, ¶¶144-149)).

Yet now, just one year later, PSP offers a significant and dramatically different proposal to the Board than it did to the UTC: asking for a more than 10% increase in its work force (62 pilots vs 56 pilots) to do virtually the same amount of work (7,530 vs 7,483 assignments). There is absolutely no analysis provided in its 2024 Proposal which explains their change in position or discusses the context of its requested change for more pilots given a comparable number of assignments.

The change in assignments projected by PSP from its 2023 UTC Rate proposal to its 2024 BPC number of pilots proposal is a projection of only +47 assignments per year. This is an increase of only 0.6% in workload and **represents just one third of a pilot or less than one additional assignment per pilot per year**. PSP does not describe in its proposal why an increase of only one job per pilot per year would justify a 10% growth in the pilot workforce.

In addition, by attempting to include 2 “extra” pilots specifically to address the PSP “comp day backlog,” it appears that PSP is attempting to use the Board’s licensing process to circumvent the UTC’s Orders on this subject.¹ The UTC’s consistent determination is that callback assignments and comp day liabilities should not be rebuilt into the overhead costs of the pilotage system. Because the UTC already determined that these pilotage services were paid for by pilot customers at the time of the provision of service, the Board should not now circumvent the UTC’s order.

PSP Proposal of July 10, 2024 is Devoid of Evidence Required to Support Board Action

The PSP Proposal of July 10, 2024 does not contain facts and evidence sufficient to provide a basis for the Board to act in support of the PSP Proposal. PSP’s submission is a thin and non-substantive proposal consisting of four pages and one exhibit, that ignores a core requirement of WAC 363-116-065 to set the number of pilots “**best calculated to optimize** the operation of a safe, fully regulated, **efficient**, and competent pilotage service.”

¹ *UTC v. Puget Sound Pilots*, TP-190976, Order 09, November 25, 2020 (¶233: “To the extent that PSP proposes to increase the number of funded pilots as a means to recover accrued callback liability, it proposes that vessels pay twice for pilotage services. We agree with PMSA that PSP should not include an additional charge to vessels for callbacks “simply because PSP decided to convert it into a unique form of unfunded deferred compensation in its own accounting.”)

PSP's submission is also remarkable in that it argues against using key WAC 363-116-065 factors. First, instead of evaluating the commercial factors of increasing or decreasing vessel traffic and assignments, PSP argues these factors are hard to analyze and are an exercise in futility. Yet, UTC Staff calculated vessel traffic projections by utilizing multiple year data. Second, instead of acknowledging the Board's regulatory right to make these determinations at its own discretion and from time-to-time, PSP instead seeks to have the Board commit to an annual process, dependent on a more volatile trailing 12-month vessel traffic factor.

Obviously, arguing against the WAC requirements is not responsive to or substantially consistent with complying with the WAC requirements.

Furthermore, PSP does not offer an actual calculation to ensure optimization. For example, PSP suggests only speculation that any potential need to reduce the number of pilots would be limited to attrition decided completely by individual pilots with no requirements to report actual retirement intentions unless of course they reach mandatory retirement age or are medically disqualified. Also, PSP has not yet explained how there is a shortage when their watch schedules at least 20% more pilots for duty daily than the average number of assignments. And, to our knowledge, PSP has not provided the Board specific daily data that would explain how this reality leads to a high level of delays and callbacks.

PSP's Vessel Traffic Projections and Pilot Assignment Trends Comments Are Inaccurate

First, while we agree with PSP that there is always a degree of variability and difficulty with precisely predicting future vessel traffic, we disagree with the novel assertion drawn by PSP that it is virtually impossible. PSP's asserts "[t]here is no way to predict how many assignments the district will have over the coming year," and that regarding "attempts in these proceedings to predict future ship traffic with any degree of certainty" that "[i]t can't be done."

This is simply not true.

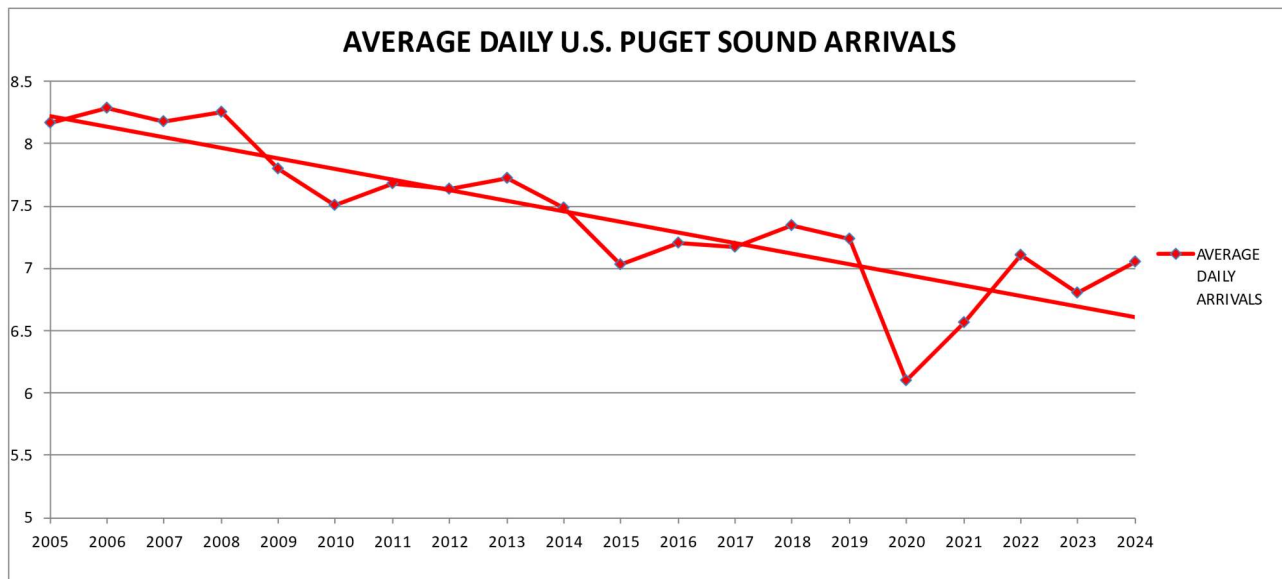
In fact, entities involved in Port operations relying on ship calls including Ports themselves, marine terminals, longshore labor, ship agents, tug companies, the required emergency response towing vessel, oil spill coverage providers, and many more all engage in some combination of underwriting, budgeting, hiring, firing, and investments based on operational forecasting and planning. And, in fact, UTC Staff forecast vessel traffic in tariff proceedings as did PSP. In the first case, UTC used 5 years of data to support conclusions. In the second case, they chose to disregard the COVID anomaly but still used multiple year data.

This vessel traffic forecasting truism is directly reflected in the setting the number of pilots WAC and unsurprisingly is also in UTC WAC provisions relevant to setting rates. PSP participates in both processes, had a direct hand in adopting and revising these WAC sections, never asserting that ship traffic projections are impossible to discuss outside a 12-month trailing number. It does not

serve this process if the Board accepts PSP’s claim and dismisses forecasts and projections as being impossible, particularly since the very act of setting an exam schedule, starting a training program for a pilot candidate and ultimately licensing a pilot are all forward-looking decisions.

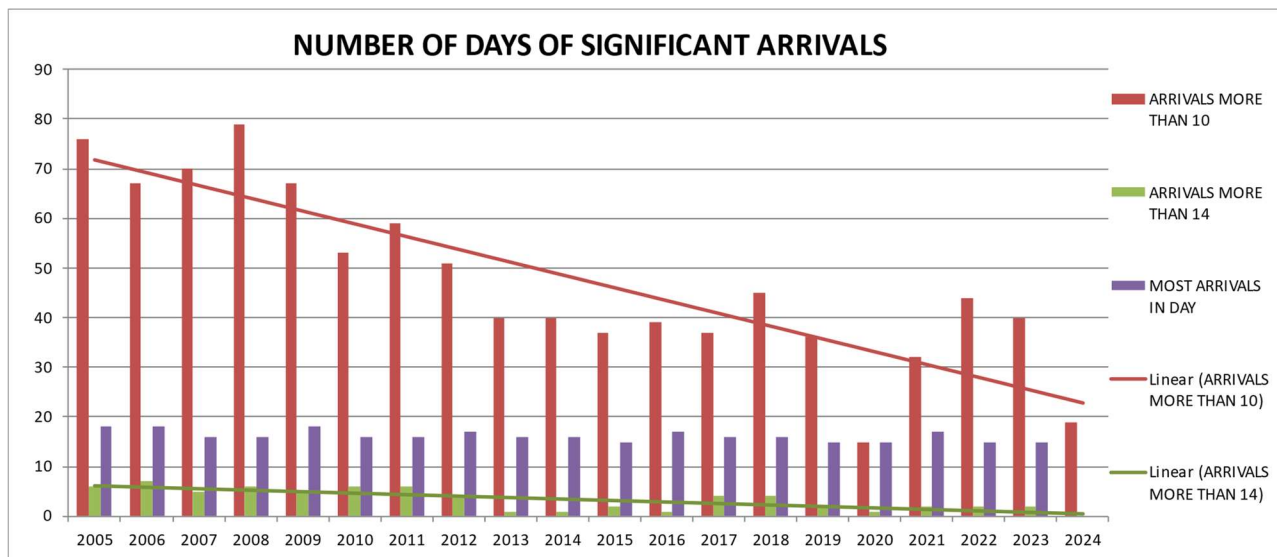
Second, when PSP makes assertions about vessel trends, it fundamentally misrepresents the long-term vessel traffic trends that categorize the Puget Sound while ironically pointing to a long-term trend to make its case while proposing the Board look only a 12-month timeframe. PSP asserts, without providing any data whatsoever, that “there are several trends today indicating that assignment numbers will continue to climb.” And, further, that “it is clear from looking at the history since 2006, that it would be advisable to be more aggressive in setting a higher number of pilots.”

These assertions are patently at odds with actual long-term trends of daily arrivals. As clearly demonstrated in the following Marine Exchange chart tracking daily vessel arrival history since 2006, which clearly shows a decreasing trend. Ironically, PSP argues that looking back to 2006 should somehow provide a rationale for the Board to increase the number of pilots.



Less Daily Volatility in Vessel Arrivals “Should” Reduce Peak Days, Delays and Callbacks

The following chart shows less volatility in daily arrivals, specifically demonstrating that the number of high daily arrival days of 10 or more (average is 7) has significantly reduced. This provides more consistency in pilotage demand thereby allowing a static watch schedule to better match daily demand with fewer “peak” days when callbacks might be used. Again, PSP does not provide daily data of on watch available pilots versus demand or explain why when more pilots are scheduled for watch daily than demand there is need for so many delays and callbacks.



PSP’s Claim of Increased Future Vessel Arrivals Is Not Only At Odds with Historic Downward Trend But Also Ignores the Fact that Container Terminals Unfortunately Face More Headwinds

PSP does not provide substantive analysis or evidence of specific trends threatening the gateway choosing to only point out potential events elsewhere that may be beneficial to the gateway. In doing so, PSP not only defies the long-term trend for the gateway, and particularly for container terminal operations, which has been fewer vessel calls, but it has not disclosed at least one key issue that could further accelerate the long term trend of decreasing ship calls particularly in the container sector in the near future: the Department of Ecology’s proposed Industrial Stormwater General Permit (ISGP) requirements specific to Washington State’s seaports.

These new requirements could result in marine terminals shutting down to be torn up for installation of expensive rainwater capture and treatment systems at a cost of up to \$1.1 million per acre. This proposal would be required in Washington, but not in any other US or Canadian container ports, resulting in further diversion away from ports in the Puget Sound. PMSA, the ports, and others are diligently engaged in avoiding this outcome but there are significant challenges to overcome. Here is an excerpt from a document submitted by stakeholders highlighting the severity of this threat to the gateway:

If terminals must be fully or partially closed in the future due to an expanded scope of the ISGP, they are very able to call on ports in Canada and up and down the West Coast and the Panama Canal to reach their destinations in the Midwest and South. This will in turn limit the number of ships and containers available to Washington’s exporters resulting in greater cost and limiting access to foreign markets.

Several entities have commented on this proposed permit and there was testimony before the NWSA managing directors yesterday in support of a legal challenge to a 9th Circuit ruling on this subject at the Supreme Court of the United States. Here is a description of the item (which was approved) from yesterday's managing directors meeting:

Dual Action NWSA and Port of Tacoma: litigation direction to file a petition for writ of certiorari of the Ninth Circuit's decision in Puget Soundkeeper Alliance v. Port of Tacoma et al., and authorize the NWSA to fund such effort in an amount up to \$250,000 in related additional legal and defense costs.

Suffice to say, this is a huge threat to the viability of gateway efforts to stem market share loss. This could significantly reduce pilotage demand via fewer vessel calls and 2nd pilot assignments.

PSP's Proposal To Only Look at 12-Month Trailing Assignments Is Inconsistent With the WAC

As discussed above, the Board has many WAC factors to consider, including "current economic **trends** in the industry, **fluctuations** in the number of calls, the **types** of assignments, the **size** of vessels, the **cyclical** nature of the traffic and whether traffic is increasing or decreasing and the need to minimize shipping delays." And, acknowledging that safety is paramount, there is also the reality that **optimizing system efficiency** is a valid mandate as well.

PSP's proposal not only attempts to lock the Board into a mandatory annual process, rather than exercising its regulatory discretion as provided under the current rule, but also attempts to substitute a 12-month activity level standard for the entire suite of listed WAC considerations.

WAC requirements to look at the cyclical nature of vessel traffic, trends and outlook, explicitly supports the Board looking at longer-term trends, like a rolling 5-year average, rather than limiting the Board's review. Of course, looking at the previous 12 months is relevant as are monthly activity reports, and major announcements or events significantly impacting pilot service demand. But these are all in a context, and express changes in condition that logically must be compared against a baseline, including one that incorporates fluctuations in the cyclical nature of traffic.

Multi-year trends flatten out swings in vessel traffic avoiding over-reliance upon more volatile month-to-month or year-to-year data which can miss cyclical trends and lead to decision whiplash. This should be avoided given that licenses essentially create property rights for pilots that on average last more than two decades. Therefore, since the Board has limited control over attrition, it must exercise caution in how many 20 plus year careers it initiates and avoid being driven by year-to-year swings of traffic instead of evaluating longer-term trends.

When industry and PSP agreed to a framework during the development of the self-correcting formula, it involved multiple year evaluations of loan payments and capital plan projections that were fair, accurate, and beneficial to the process. In fact, in a different application, PSP still uses a

3-year average to determine their retirement plan payout and applies a multiple year process to their share buy-in and payout scheme. Similarly, the UTC tariff formula uses a 5-year average which provides a more predictable and steadier outcome beneficial for planning as well as being fair and reasonable while avoiding unnecessary rate volatility. In short, we strongly recommend the Board follow the entire WAC and utilize reviews of longer-term multi-year trends while avoiding a precedent of responding to short term ups and downs.

PSP Fails to Address WAC on “How to Best Calculate An Optimized, Efficient Pilotage Service”

PSP’s submission fails to provide analysis of why it cannot optimally manage the number of licensees that currently exist. Again, on-watch pilot availability per day listed on the PSP watch schedule substantially exceeds average daily assignment demand. Yet, PSP provides no explanations why this reality has led to the number of delays and callbacks being reported each month in some cases averaging four per day. This is a glaring omission and must be fully understood by the Board to fully account for its mandates.

While PSP reports it cannot deliver efficient on-time compulsory pilotage, evidence in front of the Board is unequivocal in demonstrating the opposite: PSP scheduled on-watch pilot availability per day substantially exceeds average daily assignments and is inconsistent with the reported volume of delays and callbacks. PSP’s submission ignores these facts and does not provide any facts or evidence to counter this PMSA analysis.

If the Board wishes to make a decision based on the availability of the current licensees, then PMSA would welcome such a decision wholeheartedly. As PMSA has pointed out in its submission, and for numerous years, the Board needs to rely on facts and evidence to make determinations regarding issues of pilot availability. On this point PSP’s submission also fails to include key information around how its current watch schedule is managed or how it ensures on-watch pilot availability of existing licensees instead apparently taking the position the Board should ignore these factors.

As requested by PMSA on numerous occasions, the Board **should** require PSP to provide performance management information and evidence in general – for instance, how many scheduled for watch pilots are actually made available to pilot by PSP. But this is especially key if the Board seeks to decide the number of pilots based on performance management. Ironically, it is PSP that claims a performance management basis for the need to increase the number of pilots highlighting the monthly callback percentage without disclosing the percentage of available on watch pilots either on assignment, resting or available for assignment. Such key performance management statistics are necessary to evaluate whether the system has optimized efficiency. Imagine if only 11 on watch pilot were available on a given day out of 26 scheduled for watch. Well, that happened twice according to the NASA evaluation using PSP data and that outcome certainly does not represent an optimized and efficient system.

In contrast to the PSP Proposal, which ignored system optimization and efficiency central to a WAC 363-116-065 proceeding, PMSA’s submission in this matter included numerous well thought out recommendations for PSP and BPC to consider to more fully implement these the Pilotage Act provisions without adding new licensees. This is precisely the type of analysis that is contemplated by the regulations: one that provides a basis for the Board to consider how best to calculate the number of pilots when considering questions of optimization and efficiency.

Board Action Cannot Presume That Optimal Efficiency Has Been Achieved

Relying solely on adjusting the number of pilots to meet demand is equivalent to presuming that optimal efficiency in providing pilot service has already been achieved. It hasn’t.

PMSA’s recommendations are not intended to convey that PSP has not implemented improvements. For example, we applaud the increase in transition days, something we called for over the years. However, that in and of itself cannot be presumed to result in optimal efficiency.

For example, one of the recommendations PMSA provided regarded adjusting transition days to the busiest days of the week. Based on current year data, Friday is the best candidate for consideration of a transition day, but we’d urge longer-term analysis to validate that or reveal other potential improvements or reveal that current transition days are working optimally. Without evidence, the Board cannot rely solely on PSP representations alone.

NUMBER OF ARRIVALS BY DAY THROUGH JULY 26, 2024

SHOULD FRIDAY BE A TRANSITION DAY?

MON	195	7
TUE	213	3
WED	220	2
THU	203	4
FRI	264	1
SAT	196	6
SUN	202	5

1493

PSP Does Not Address Actual Piloting A Ship Workload – Bridge Hours

Bridge hours measure how much time a pilot is piloting a ship – the primary activity required by the Pilotage Act. PSP did not address this fundamental metric in their submittal though it is logical to presume that determining the number of pilots would require a full evaluation of actual “piloting a ship” workload, yet, that too is absent.

The table below, (Exh. MM-21, from UTC proceeding TP-190956), shows the level of stability over 10 years pre-COVID in overall workload despite the fluctuation in number of pilots which averaged

52.4 per year over these 10 years. Half of the years involved over 7,500 assignments which is close to what PSP “forecast” in their submittal. For reference, rest rule/policy changes were implemented in 2015, 2018 and 2019 per the BPC “Green Line Chart”.

This table demonstrates 54.2 pilots worked an average of 697 bridge hours per pilot in 2014 and 49.5 pilots worked an average of 699 bridge hours per pilot in 2019. Isolating the number of pilots alone does not reasonably allow one to draw specific outcomes regarding pilot workloads.

What if PSP Proposed Trailing 12 Months Was Used to Set the Number of Pilots in 2019?

The TAL at the time was 145. If BPC used the ship move assignments listed in the table, they would have reduced the number of working pilot licenses to 46 (plus 1 for the president).

Exh. MM-21

Total Bridge Hours and Average Bridge Hours per Pilot (2010-2019)

Year	Moves	Avg. Bridge Hours per Move*	Total Hours	Number of Pilots	Avg. Bridge Hours Per Pilot
2010	7,262	5.03	36,527.86	55.4	659
2011	7,490	5.03	37,674.70	52.58	717
2012	7,637	5.03	38,414.11	51.9	740
2013	7,702	5.03	38,741.06	53.1	730
2014	7,515	5.03	37,800.45	54.2	697
2015	7,627	5.03	38,363.81	53.2	721
2016	7,525	5.03	37,850.75	52	728
2017	7,092	5.03	35,672.76	52	686
2018	7,160	5.03	36,014.80	50.3	716
2019	6,877	5.03	34,591.31	49.5	699

Source: BPC Spreadsheets [Exh. ROYER-9], BPC Annual Reports [Exh. ROYER-5], PSP Revenue Projections (Exh. WTB-11)

* 2018-19 Test Period Avg. Bridge Hours per Move [Exh. MOORE-14] Based on PSP Revenue Projection Spreadsheet (Exh. WTB-11) PSP Revenue Projection Spreadsheet (Exh. WTB-11) was modified for the purposes of calculation of the Average Bridge Hours per Move in the following manner:
Using the "AVERAGE" function in Excel, the Column G ("Hours") Raw Data Result is: -13230.19615
This is obviously an error, as Hours should always be a positive number and the average time spent on an assignment, if positive would never approach 13,230.2 hours.
A sort by value of Column G ("Hours") reveals 999 entries with negative hours, 911 of which are in excess of -1,000,000 hours.
Any hour entry which is negative, including the entries of greater than -1,000,000 hours have been excluded as anomalies.
Upon exclusion of these negative entries, we reran the "AVERAGE" function for Column G ("Hours") and the Result was: 5.03

PSP Does Not Attempt to Explain Why Additional Pilots Have Not Significantly Reduced Delays and Callbacks per Earlier Claims

PSP’s Proposal seems to assert that increasing the number of pilots can be viewed in isolation, without reference to other factors, and that the Board should act in a manner which presumes adding pilots will automatically reduce callbacks, delays, or improve other pilotage metrics. Based on the available data, the Board cannot make such a presumption. Indeed, looking at the actual

data available to the Board leaves one to draw the conclusion that delays and callbacks are not a resource problem (lack of licensees), but a resource management problem.

Case in point, the Board's latest "Green Line Chart", see attached, shows less than 50 available pilots for most of the 96 months covered by the chart. However, now that PSP has 55 working pilots, more than 3 on-watch pilots have been added when compared to most of the 96 months in that chart. If PSP's presumption is to be believed, there should be a marked reduction in callback use and delays, but that has not proven to be the case. Proving again that a significant number of delays and callbacks must be generated by lack of managing on watch pilot availability which should include some level of control over comp days. To make that point, imagine if the entire watch took the same comp day or even half the watch.

PSP Successfully Requested A Reduction to 52 Working Pilots at Same Workload

The "Green Line Chart" clearly shows the average number of licensed pilots during the eight-year timeframe is significantly lower than the 56 licenses today. And at no time in this timeframe or overall history have we found documentation by BPC of a pilot fatigue caused accident. It is ironic that in 2015, the year before this chart began, PSP successfully requested a second consecutive reduction in the number of pilots down to 52 working pilots based on a 7,553 annual assignment workload (BPC February 2015 Meeting). Now, at virtually that same assignment level, PSP requests a total of 62 pilots. Apparently, times have changed but even a simplified macro analysis of total hours before and after rest rules does not come close to supporting a 20% increase in pilots, yet the pattern seems to be when there is no data, blame the rest rules.

Finally at 56 Pilots But Where is the Reduction in Comp Days and Delays?

In the current situation, the number of pilots has reached the Board authorized level of 56 and the expectation of a significant improvement in PSP service, lowering callbacks, and eliminating delays. PSP made this claim itself, in its testimony to the UTC in 2020 when PSP calculated an increase of 3 on-watch pilots would eliminate 900 of the 1,188 call backs in the specified test year. Yet, the current reality is that adding more than 3 on watch pilots has not resulted in significant callback and delay reductions². And, that lack of improvement has occurred even though the original PSP analysis in 2020 predates improvements in the PSP watch schedule designed in part to make more pilots available via additional transition days to reduce use of callbacks.

Although PSP's analysis clearly asserted that increases in the number of pilots by adding 1, 2, or 3 on watch pilots, should significantly reduce callbacks, that has not been the case. The reason why: lack of on watch pilot availability with the current number of licensees which speaks to the management of on watch pilot availability including how comp days are managed to minimize creation of delays and callbacks. We still don't know how many callbacks or delays are generated

² The PSP July 2024 Activity Report Indicates 98 Times a Pilot Delay or Callback Was Involved Despite the Increase to 56 Pilots.

by comp days, meetings, training or something else but the available data infers the number is significant thereby highlighting the need to optimize pilot availability.

PMSA supports a “fully staffed” pilot corps to provide safe, efficient, and optimal service. Defining “fully staffed”, however, is the key. PMSA respectfully submits that at a Target Assignment Level of 129, 123 on-watch assignments with 5% off-watch callbacks per pilot, there will be, on average, 236 days of the year that a pilot wouldn’t be moving a ship³. There is a myriad of watch schedule options that could be evaluated to address how to best match 129 days of ship assignments (and 236 days not moving a ship) out of 365 each year to optimize efficiency in meeting demand.

But PSP’s submittal didn’t discuss potential changes to their current nearly “half on, half off” watch system that on paper indicates 177.65 duty days plus 3 days during cruise season. Recall, just one of the PMSA Recommendations called for adding 2 days of watch to each pilot to attain a full half on schedule. Those 2 days could be applied during peak days or season similar to callbacks only without the generation and accumulation of comp days and comp day generated callbacks.

PSP’s Submission Concurrs that Administrative Meetings are Not Assignments

Since the word “assignment(s)” is in PSP’s submission, it is important to note that a meeting is not equivalent to an assignment. PSP’s Proposal agrees, as it only involves ship moving assignments, and does not quantify pilot meetings as particularly new or different than the baseline. Meetings are not a new pilot demand. In fact, development of the 065 language, in which PMSA and PSP participated, acknowledged and considered such meetings, as “administrative responsibilities.” PSP’s own By-Laws concur that administrative tasks are not assignments (See PSP Bylaws, Section 3.8 (““Assignment” shall mean an assignment to pilot a vessel.”))

PSP Proposal Misrepresents that Existing Rest Rules are “New”

PSP’s submission states that rest rules have been implemented over the “last few years,” and in place only the past “27 months” in one instance but “20 months” in another. However, initial rest changes were implemented 9 years ago in 2015 with the 3 and out change. Additional changes were implemented more than 5 years ago. These are not new developments implemented only in the past two years. And, as PSP has submitted in its sworn testimony to the UTC, it does not object to calculating average assignment levels using data after 2017 and 2018, because the data from 2019 on was not problematic.⁴ But obviously that is more than 5 years ago now and the most recent change was an efficiency measure to increase pilot utilization, not decrease it. That means we have more than 5 years of data with these more stringent rest measures in place.

³ PMSA’s Moore argued for a higher TAL on the Safety Committee that included discussions regarding the final recommendation of an on-watch TAL that would address delays and wind down comp day numbers consistent with comments made by the Safety Committee Chair.

⁴ See Carlson, Exh. IC-08Tr at 8:3-9 (arguing that Final Order 09’s decision to use a five-year average was problematic because it included 2017 and 2018 data that reflected less stringent rest rules).

Medical/NFFD Has Been Considered but PSP Infers It is New

The PSP proposal suggests that an additional 0.87 FTE pilot should be added for injury, illness, and NFFD status, inferring that this has not already been factored into the existing number of pilots. That is simply not true. Major medical and not fit for duty have been reported and discussed at Board meetings literally for decades. It is reported to the Board monthly. The BPC “Green Line Chart” specifically accounts for this at the very top of the chart in order to calculate the number of available pilots. PSP incorporates major medical or NFFD data into their calculations and reports. Relevant history includes discussing and setting the “safe” assignment level (SAL as it was called) at 149 and that process included recognition that NFFD pilots was a component of the decision. This was fully recognized by the parties in the joint agreement on tariff between industry and PSP and implemented by BPC in the 10 years of that agreement. The BPC eventually changed the name to target assignment level (TAL) after industry pointed out that two pilots performed over 220 assignments safely so doing more than 145 was not unsafe. BPC then reduced it to 145 in 2010 after receiving comments and testimony including discussions of activities other than piloting a ship including prep, travel, repos, training, meetings and NFFD. These are not new topics.

The PSP request now, therefore, reflects a double counting of the NFFD factor and presumes that NFFD and major medical were not considered by safety committee/members or by any commissioners in reaching their position. The Board’s records document significant discussions about training, meetings, medical, repos, travel, prep, piloting, respite time, earned time off and callbacks.

Conclusion: PSP Has Not Provided the Board with Reasonable Basis for Increasing the Number of Pilots and Board Action Taken Without a Basis is Arbitrary and Capricious

PSP’s submission provides an abbreviated and incomplete record upon which the Board may not reasonably take any action. To do so, without findings or the facts and evidence upon which such findings might rely, the Board would be acting in a manner which is nearly *per se* arbitrary and capricious. If the Board proceeds with action, it should instead act consistent with PMSA’s submission by directing adoption of the numerous Recommendations which are consistent with an optimization of efficiency and calculated consistent with WAC 363-116-065.

Sincerely,



Capt. Mike Moore
Vice President

Enclosure: Board of Pilotage Commissioners “Green Line Chart” Dated 02/15/2024