



**UTC**

Washington Utilities  
and Transportation  
Commission

# STATUS REPORT ON REVISIONS TO ESTABLISHING MARINE PILOTAGE TARIFFS

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

**FINAL**

June 29, 2020

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## **I. INTRODUCTION AND BACKGROUND**

The Utilities and Transportation Commission (UTC or commission) regulates investor-owned electric and natural gas utilities, landline telephone companies, solid waste collectors, and private water systems to ensure vital services are safe, available, reliable, and fairly priced. The commission also regulates the safety practices of railroads and pipeline companies along with motor carriers operating in Washington. Motor carriers under UTC jurisdiction include household goods movers, defined as carriers transporting household goods between residences or between a person's residence and a storage facility within the state.

In 2018, the Legislature passed SSB 6519, Chapter 107, Laws of 2018, which transfers marine pilotage rate-setting authority from the Board of Pilotage Commissioners (BPC) to the commission effective July 1, 2019. The legislation also transfers to the commission consideration of the Grays Harbor port district's tariff rate recommendations for pilotage services, and authorizes the commission's reasonable costs for setting the tariff rates for inclusion in those rates. In addition to transferring rate-setting authority, Section 1 (3), directs the commission to provide this report to the Governor and the transportation committees of the Legislature on matters related to establishing the tariffs and comparisons of that process to the recommendations made in the January 2018 Washington State Joint Transportation Committee (JTC) report on pilotage.

In order to ensure the timely adoption of rules, RCW 81.116.900 allowed the commission to adopt rules prior to July 1, 2019. The purpose of the rulemaking was to establish rules for general rate proceedings for marine pilotage services, including a detailed description of the information required for such filings.

In 2017, the Legislature passed into law 2ESSB 5096, which included appropriations of \$200,000 for the JTC to conduct a study of marine pilotage in Washington state. The JTC commissioned the study and began examining current practices in the marine pilotage industry through its consultants, Community Attributes, Inc. and Gleason & Associates. The study and subsequent report to the Legislature in 2018 focused 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 found that while the Washington State Pilotage Act required the BPC to fix tariffs for pilotage services, it provided very little guidance or rationale for the process. Instead the January 2018 report noted that an annual requirement on tariff setting incentivized stakeholders to continuously advocate for adjustments while limiting discussions on important BPC jurisdictional matters, including issues relating to safety. The report concluded that the BPC

makes decisions on tariff adjustments with “no clearly defined methodology for the tariff and fee rate-setting process.”<sup>1</sup>

In order to address the lack of consistency, clarity, and timeliness of the data submission to the BPC for rate setting, the report recommended a transfer of rate-setting authority to the UTC, describing it as “the single most effective action the Legislature can take to improve rate-setting in Washington state.”<sup>2</sup>

As outlined in the JTC Pilotage Report, some of the best practices for tariff and rate-setting include:

- A defined, transparent process for pilotage tariff and fee rate-setting.
- No annual requirement for rate changes.
- A well-established criterion for a rate adjustment.
- Any board voting on rate adjustments should have financial or some other described expertise with no conflict of interest.
- A tariff and fee setting process with automatic adjusters to help avoid the need for annual reviews.
- A clear and transparent process for capital expenses and planning.
- Automatic and non-contested tariff rate and fee adjustments.

The report also discussed the role of marine pilots and the marine pilotage system in Washington State. A marine pilot’s primary objective is to facilitate the safe movement of vessels into and out of ports situated in coastal and inland water bodies. Pilots have specialized local knowledge and training to safely navigate the wide range of unique environments. There are currently 24 coastal states, including Washington, that regulate pilotage through state licensing. Washington state is home to two pilotage districts, Puget Sound and Grays Harbor. The Puget Sound district is defined as including “all the waters of the state of 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>3</sup> This district covers more than 7,000 square miles, 12 ports, and over two dozen anchorages. The Grays Harbor district is defined to include “all inland waters,

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<sup>1</sup> Washington State Pilotage Final Report and Recommendations, Washington State Joint Transportation Committee, January 18, 2018, page 68.

<sup>2</sup> Washington State Pilotage Final Report and Recommendations, Washington State Joint Transportation Committee, January 18, 2018, page IX and 68.

<sup>3</sup> RCW 88.16.050 (1)

channels, waterways, and navigable tributaries within Grays Harbor and Willapa Harbor.”<sup>4</sup> The Grays Harbor district covers approximately 280 square miles.

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<sup>4</sup> RCW 88.16.050 (2)

## **II. REGULATION OF MARINE PILOTAGE TARIFFS**

The UTC initiated a rulemaking<sup>5</sup> in August 2018, in Docket TP-180402, to implement Substitute Senate Bill (SSB) 6519, Chapter 107, Laws of 2018, which transferred marine pilotage rate-setting authority from the BPC to the UTC effective July 1, 2019. The rulemaking also addressed the Grays Harbor port district's tariff rate recommendations for pilotage services.

The UTC filed a CR-101 Preproposal Statement of Inquiry on August 10, 2018, to develop rules to implement SSB 6519 regarding marine pilotage rate-setting. At the same time, the commission issued a Notice of Opportunity to File Written Comments. Three comments were received from Puget Sound Pilots, Holland America, and Pacific Merchant Shipping Association.

On September 19, 2018, the commission issued a Notice of Workshop to be held on October 19, 2018. The responses to the Notice to file written comments and the comments received at the workshop were used in the development of a second set of discussion draft rules.

On January 18, 2019, the commission 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, the Puget Sound Pilots, Pacific Merchant Shippers Association, the Port of Seattle, and the Port of Grays Harbor, accompanied by the second draft rules. No responses were received to the SBEIS questionnaire and the UTC received no cost impacts through multiple telephone and in person conversations with the industry. The commission received comments on the second draft rule from the same three interested parties as the initial draft rule.

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 of Proposed Rule Adoption Hearing to all interested parties, provided an opportunity to comment on the proposed rules, and set the adoption hearing for April 24, 2019.

On May 3, 2019, the commission adopted the marine pilotage rate-setting authority rules in General Order R-596, Order Amending and Adopting Rules Permanently.

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<sup>5</sup> Docket TP-180402, Implementation of Substitute Senate Bill 6519, Chapter 107, Laws of 2018.

### III. OVERVIEW OF FIRST MARINE PILOTAGE TARIFF FILINGS

#### GRAYS HARBOR

On November 11, 2019, the Port of Grays Harbor (the Port) filed its proposed tariff for pilotage service with the commission in Docket TP-190965 with a recommended increase of its tariffed rates. The Port also provided in its filing its 2020 pilotage budget, a five-year capital spending plan, and the Port's prior-year financial statement. Prior to filing with the commission, the Port released the proposed schedules and tariff to the public on October 8, 2019, at a scheduled public hearing at the Port's offices.

On November 12, 2019, the Port held a public hearing at its main office at 111 S. Wooding Street in Aberdeen, where the public was provided the opportunity to comment on the proposed tariff. The Port's commission 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 percent 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.

After commission staff reviewed the Port's filing, it was brought before the commission during its open meeting held on December 19, 2019. The commissioners took no action, thereby allowing the tariff pages filed by the Port to become effective January 1, 2020, by operation of law. The commission is authorized to assess fees through the Ports pilotage tariffs to recover its reasonable costs incurred to establish or amend the tariff rates of the Port. However, amending the Port of Grays Harbor tariff rate had only a marginal cost on the commission, therefore, no additional fee was included in the Port's tariffed rates to recover those costs.

#### PUGET SOUND

On November 19, 2019, Puget Sound Pilots (PSP) submitted an initial tariff filing to the commission in Docket TP-190976. The PSP requests a three-year rate plan with proposed rates to become effective on October 23, 2020. PSP's multi-year rate plan has a total revenue increase of 39.9 percent over the three-year rate plan period.

The significant issues raised in the PSP tariff filing involve:

- Retirement program
- Callback days
- Recruitment and pilot compensation package
- Travel reimbursement
- Service time charge

- Pilot workload and vessel forecast

Key Background Dates for First Tariff Filing:

- On November 19, 2019, PSP filed with the commission its initial proposed tariff. On November 21, 2019, the commission entered Order 01, suspending the tariff filing and setting the matter for adjudication.
- On December 12, 2019, the commission convened a prehearing conference in this matter, and on December 17, entered Order 02, Prehearing Conference Order; Notice of Hearing, set for June 29-30, 2020 (Order 02). Order 02, among other things, granted Pacific Merchant Shipping Association's (PMSA) petition to intervene and established a procedural schedule.
- On January 14, 2020, Pacific Yacht Management (PYM) filed with the commission a late-filed petition to intervene. The commission granted PYM's petition by Order 03 on January 31, 2020.
- On March 26, 2020, PSP filed with the commission a Request to Extend the Procedural Schedule set by Order 02 (Motion). In its Motion, PSP explains that the present COVID-19 pandemic has directly impacted the availability of resources, documents, communications, and parties, thereby necessitating modifications to the procedural schedule and an extension of the tariff suspension date from October 23, 2020, until December 4, 2020. The commission granted PSP's petition on March 31, 2020.



**Modified Procedural Schedule (as a result of 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 29, 2020</b>  |
| Exhibits List, Cross-Examination Exhibits, Witnesses List, Time Estimates, Exhibits Errata | <b>June 22, 2020</b>                      | <b>August 5, 2020</b>   |
| Evidentiary Hearing  | <b>June 29 and 30, 2020, at 9:30 a.m.</b> | <b>August 12, 2020, at 8:30 a.m., continuing on August 13, 2020</b> |
| Simultaneous Post-Hearing Briefs   | <b>July 20, 2020</b>                      | <b>September 3, 2020</b>  |
| Simultaneous Reply Briefs  | <b>August 3, 2020</b>                     | <b>September 17, 2020</b>   |
| Suspension Date  | <b>October 23, 2020</b>                   | <b>December 4, 2020</b>   |

#### **IV. CONCLUSION**

As directed in the 2018 legislation (SSB 6519) Section 1 (3), transferring authority to set marine pilotage rates/tariffs to the UTC, the commission is required to provide this report to the Governor and the transportation committees of the Legislature on matters related to establishing the tariffs and comparisons of that process to the recommendations made in the January 2018 JTC report on pilotage. Due to the timing of the first Puget Sound pilotage petition in November 2019 and the Commission's approval to extend the procedural schedule due to the COVID-19 pandemic, this report should be considered a Status Report.

In July 2021, after the first PSP general rate case has concluded, the commission will submit to the Governor and the transportation committees of the Legislature, its final report, which will include a comparison of the process and outcomes of the first tariffs and general rate proceeding administered by the commission to set pilotage rates, in relation to the recommendations made in the January 2018 JTC Washington state pilotage final report.

**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.   |