

MEETING MINUTES

STATE OF WASHINGTON BOARD OF PILOTAGE COMMISSIONERS

May 23, 2007

Present:

Chairman: Harry Dudley

Commissioners: Chuck Davis, Ole Mackey, Pat Hannigan, Bill Snyder, Vince Addington, Craig Lee,
Andy Palmer and Norm Davis

Assistant Attorney General: Susan Cruise

Administration: Peggy Larson and Judy Bell

Richard McCurdy, Dave Sanders, Mel Flavel, Don Mayer, Dan Shaffer, Cal Hunziker, Bill Bundren,
Walt Tabler: Puget Sound Pilots

Mike Moore, Jim Papp, Doug Coburn, Matthew Darbous, Jordan Royer: Pacific Merchant Shipping
Association

George Quick: Masters, Mates and Pilots

Paul Amos, Cliff Austin: Columbia River Pilots

Peter McIsaac, W. Greig: San Francisco Bar Pilots

Phil Lutes: Port of Seattle

Mark Quehrn, Tom Christy: Perkins Coie

Gary Nelson, Mary Nelson, Stephen Cooke: Port of Grays Harbor

Ron Kinsey: USCG Sector Seattle

Stan Loosmore: John Arnold

David Grobschmit, Jostein Kalvoy: pilot trainees

Eric Klapperich, Gordon Wildes, Katharine Sweeney: pilot applicants

Mike Gavin, Joe Wilczynski, Mike Schwab: public

PUBLIC HEARING

A public hearing of the Board of Pilotage Commissioners was convened at 9:30 a.m. by Chairman Harry Dudley at 2901 Third Avenue, Seattle, Washington.

WAC 363-116-300: Pilotage Rates for the Puget Sound Pilotage District. RCW 88.16.035(4) requires the Board of Pilotage Commissioners to annually fix pilotage tariffs. The filed rule reflects a range of increases to be charged for pilotage services in the Puget Sound Pilotage District for the 2007-2008 tariff year. The filing was based on a letter dated March 21, 2007 in which a joint submittal from Puget Sound Pilots, Pacific Merchant Shipping Association and Polar Tankers, Inc. was presented which detailed their requests for rule amendments. The low end of the range was proposed by the Pacific Merchant Shipping Association (PMSA) and Polar Tankers, Inc. NW (PTI). The high end of the range and other specified increases and amendments were proposed by the Puget Sound Pilots (PSP). Nearly all rates are at issue. Upon consideration of all written and oral testimony, it is anticipated that the adopted rule will reflect increases to the tariff in the range between 0% and 14%. Exceptions include some tariff categories which are outside of this range or specifically allocated to new charges and are specified as follows. PMSA and PTI propose that the low end of the range of increases is 0% applied across-the-board except for the *Transportation* and *Training Surcharge* categories to which no change is applied. PSP proposes that the high end of the range of increases is 8% applied across-the-board (except for the *Transportation* and *Training Surcharge* categories to which no change is applied) and the creation of a new *Pension Charge* in the amount of \$195 per assignment (the equivalent of an additional 6% across-the-board increase). PSP also proposes a modification to the *Delinquent Payment Charge* category to make interest payable starting 30 days from the first billing. PMSA and PTI do not support the addition of a *Pension Charge* or the amendment to the *Delinquent Payment Charge*. In addition, the Board proposed an editorial change in the *Training Surcharge* category. Subsequent to the filing, PSP has amended its proposal to a 10% tariff increase (up from the original request of 8%) and an amended amount of \$194 (down from \$195) for the newly proposed *Pension Charge* category. PMSA and PTI have amended their proposal as well, to a 2% tariff increase (up from the original request of 0%).

All written documents submitted in accordance with the timetable established for tariff document submission were considered in today's tariff determination, in addition to numerous letters from interested parties and members of the public. The contested proposal regarding the addition of a new Pension Charge category was widely debated. Testimony was offered by counsel from the law firm of Perkins Coie. The Board heard remarks from its counsel later in Executive Session regarding her research of the matter.

Oral testimony on behalf of the Puget Sound Pilots was presented by Walt Tabler, George Quick, Mel Flavel, Mike Gavin, Mark Quehrn and Tom Christy. Oral testimony on behalf of the shipping industry was presented by Mike Moore and Phil Lutz. Rebuttals followed. The public hearing was closed by Chairman Dudley at 2:10 p.m. This hearing was recorded on audiotape.

An EXECUTIVE SESSION was called from 2:20 p.m. to 3:00 p.m. for purposes of discussing potential litigation. In attendance were Chairman Dudley, Commissioners C. Davis, Mackey, Hannigan, Snyder, Addington, Lee, Palmer and N. Davis; Susan Cruise, Peggy Larson and Judy Bell.

REGULAR MEETING

The regular meeting of the Board of Pilotage Commissioners was convened immediately following executive session.

Consideration of Preceding Hearing: WAC 363-116-300. Following the Board's review and consideration of all written and oral testimony, it was moved by Commissioner Hannigan and seconded by Commissioner Palmer that the Board initiate action to hire a special Assistant Attorney General to do a comprehensive analysis of the Board's responsibilities, authority and the risks inherent in the Board's setting tariffs which reimburse the expenses of the Puget Sound Pilots' and the Grays Harbor Pilots' retirement plans. His motion removes Board consideration of the newly proposed Pension Charge category for inclusion in the 2007-2008 tariff. The motion carried with a vote of five in favor, two opposed, Commissioner Addington abstaining and the Chair not voting.

It was moved by Commissioner Mackey and seconded by Commissioner Hannigan that the *Delinquent Payment Charge* reads "1½% per month after 30 45 days from first billing". The motion carried with a vote of six in favor, Commissioner Addington opposed, Commissioner Lee abstaining and the Chair not voting. It is understood that the 30-day period begins when the invoices are received, not sent.

It was moved by Commissioner Lee and seconded by Commissioner Addington to extend the current 2006-2007 tariff for another year (0% change) except for the *Delinquent Payment Charge* just amended. It was moved by Commissioner C. Davis and seconded by Commissioner Palmer that the motion on the table be amended to provide a new 2007-2008 tariff which includes an across-the-board increase of 5% to all tariff categories except transportation and the training surcharge. The motion to amend Commissioner Lee/Addington's motion carried with a vote of 7 in favor, Commissioner Mackey opposed and the Chair not voting. Commissioner Lee/Addington's amended motion carried with a vote of 8 in favor and the Chair not voting.

The effective period of the new tariff will be from 0001 hours on July 1, 2007 through 2400 hours on June 30, 2008. All written materials, Power Point presentations and more detailed records of testimony, discussion and motions are contained in the rule-making file. (4:10 p.m.)

In summary, the proposed rule reflected a tariff increase in a range of 0% to 8% which was modified by both PSP and Industry to a range of 2% to 10% with the noted exceptions being the *Transportation* and *Training Surcharge* categories. The adopted rule reflects a tariff increase of 5% across-the-board with the above noted exceptions. It also includes an amendment to the *Delinquent Payment Charge* category for a 30-day (not 45-day) payment window and it does not include the new *Pension Charge* category which, if adopted, would have been equivalent to an additional 6% across-the-board increase.

Minutes. There being no corrections or additions, the April 18, 2007 Minutes stand approved as written.

OLD BUSINESS

Pilot's Report of Marine Safety Occurrence: *HORIZON PACIFIC*, 11-13-06 ~ Captain John Arnold.

It has been determined that Captain John Arnold has complied with the Board's invitation to re-write his MSO Report and work with the TEC to develop a *Lessons Learned Report* regarding the *HORIZON PACIFIC*. Following a review of the filed documents by the TEC and the Board, it was moved by Commissioner Palmer and seconded by Commissioner Hannigan that this report of a near-miss be filed as a Marine Safety Occurrence; and further, by friendly amendment from Chairman Dudley, that the TEC be tasked with converting the *Lessons Learned Report* into a generic document to be used as a training tool for all pilots. The motion carried.

Consideration of Tabled Motion Regarding RCW 88.16.190. The amended motion on the table is: "It is the policy of the Washington State Board of Pilotage Commissioners to recommend to owners or charters of oil tankers under 40,000 DWT as defined in RCW 88.16.190 the use of tug escorts when underway not in ballast in the Puget Sound Pilotage District beyond a point east of a line extending from Davidson Island Light south to New Dungeness Light." In light of the recent passage of the Board's Policy Statement concerning this same statute, Commissioner Palmer, who originated the motion, stated he wished to withdraw the amended motion. The amender and seconders concurred. Commissioner Palmer however, urged the Board to gather more information concerning oil tankers calling in Puget Sound that are under the 40,000 DWT threshold in terms of frequency of calls and age of the vessels, with an eye toward possibly revisiting this motion in the future.

2007 Legislative Activity Report ~ Engrossed Substitute House Bill 1094. Peggy Larson reported that the Transportation Budget bill was signed by Governor Gregoire on May 15, 2007. All provisions pertaining to the Board were passed without amendment or veto. Those provisions are: a \$300,000 supplemental appropriation for the current 2005-07 biennium; a \$1,156,000 total budget appropriation for the 2007-09 biennium beginning July 1; authority to set pilot license fees through the rule-making process rather than by statute during the 2007-09 biennium only; and authority to use training stipend revenue for Board operating expenses. If it becomes necessary to use training stipend revenue in the case of a budgetary shortfall, it is the intent of the Board that it will be repaid.

Consideration of Proposed Rule-Making Regarding:

WAC 363-116-082: Limitations on New Pilots. Amendments to the license upgrade trip requirements for the Grays Harbor Pilotage District were filed under emergency provisions on April 19, 2007. The rule remains in effect for 120 days or until a permanent rule is adopted. It was moved by Commissioner Hannigan and seconded by Commissioner Mackey to schedule a public hearing to establish the rule permanently. The motion carried.

WAC 363-116-070: Collection of Fees. The passage of the Transportation Budget Bill (ESHB 1094) gives the Board authority to set the annual pilot license fee through the rule-making process. It was determined that an increase in the pilot license fee is necessary to fund the operating costs of the Board for the next biennium beginning July 1, 2007. A \$6,000 fee is being considered for emergency adoption at the June 14th meeting to become effective on July 1st. Further discussion will continue next month and financial data will be provided to guide the Board in the determination of an appropriate fee amount.

NEW BUSINESS

2007 Annual Tariff Hearings Preparation. GHPD – A 2007-2008 written tariff proposal from the Port of Grays Harbor has been submitted to the Board in addition to the 2006 Preliminary Financial Statement in accordance with the timetable established for tariff document submission. Gary Nelson stated that their annual audit has been completed and the Board will be receiving copies of the 2006 Audited Financial Statement in early June. A public hearing has been filed for June 14, 2007, at 9:30

a.m. The deadline for public comments and any other written proposals is June 7th. Any member of the public will also have an opportunity to testify at the hearing.

Seven-Month Review and Consideration of Licensure of PSPD Trainees: Captain David Grobschmit and Captain Jostein Kalvoy. On behalf of the Trainee Evaluation Committee (TEC) Commissioner Snyder reported that after a thorough review of all *Pilot Trainee Trip Reports* submitted to the Board, the TEC unanimously voted to recommend the issuance of a state pilot license to Captain David Grobschmit and to Captain Jostein Kalvoy who have successfully met the requirements of their seven-month training programs. It was moved by Commissioner Snyder and seconded by Commissioner Addington that license #169 for the Puget Sound Pilotage District be issued to Captain David Grobschmit and license #170 for the Puget Sound Pilotage District be issued to Captain Jostein Kalvoy. The motion carried. The TEC has been continuously reviewing summaries of training reports on these trainees for the past seven months. In addition, the Board has also reviewed these evaluations. These reviews, along with the recommendation by the TEC are the basis for the licensing action taken today. The licenses were dated and signed today, and the new pilots are eligible for dispatch. The PSP roster is now at 55 licensed pilots.

Approval of Pilot Training Programs for Captain Eric Klapperich and Captain Gordon Wildes. The TEC presented custom tailored training programs for Captains Eric Klapperich and Gordon Wildes to the Board for review. It was moved by Commissioner Snyder and seconded by Commissioner Mackey that the Board approve the two training programs as written by the TEC. The motion carried. Captains Klapperich and Wildes have fifteen days to respond to the Board concerning the acceptance of their training programs.

Pilot's Report of Incident: CAPE HENRY, 5-5-07. While approaching Terminal 4A in Aberdeen with three tugs to assist with the turn at Cow Point Basin, the starboard backing tug reported his line had parted. While continuing to turn, the tug on the port bow reported that he had a fire. The tug on the starboard bow was directed to take its place; and then, by adding the use of the ship's thrusters, Captain D'Angelo was able to maneuver the vessel to a successful starboard side docking. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that this Report of Incident be filed as a Marine Safety Occurrence, not an Incident, since there was no evidence that the vessel went aground and the damage to the tug's line was by no fault of the pilot. The motion carried.

Consideration of Petition for Vessel Exemption: Motor Yacht WIND HORSE. A petition for vessel exemption was received regarding the foreign flagged 83', 54 gross ton Motor Yacht *WIND HORSE*. Pursuant to RCW 88.16.070 and WAC 363-116-360, this vessel qualifies for an exemption from pilotage requirements and was issued an interim exemption by Chairman Dudley on May 3, 2007, subject to final Board approval at today's meeting. It was moved by Commissioner Mackey and seconded by Commissioner Snyder that the Board concur with his action and issue the exemption for the *WIND HORSE* for three months so long as it remains in the charge of Captain Steve Dashew. The motion carried.

Consideration of Petition for Vessel Exemption: Motor Yacht METOLIUS. A petition for vessel exemption was received regarding the foreign flagged 83.5', 66.77 gross ton Motor Yacht *METOLIUS*. Pursuant to RCW 88.16.070 and WAC 363-116-360, this vessel qualifies for an exemption from pilotage requirements. It was moved by Commissioner Mackey and seconded by Commissioner Snyder that the Board grant a three-month exemption as requested, to the *METOLIUS* so long as it remains in the charge of Captain Michael Hall. The motion carried.

Consideration of Petition for Vessel Exemption: Motor Yacht STEADFAST. A petition for vessel exemption was received regarding the foreign flagged 112', 211 gross ton Motor Yacht *STEADFAST*. Pursuant to RCW 88.16.070 and WAC 363-116-360, this vessel qualifies for an exemption from pilotage requirements. It was moved by Commissioner Mackey and seconded by Commissioner Snyder that the Board grant a three-month exemption as requested, to the *STEADFAST* so long as it remains in the charge of Captain Robert Harrison. The motion carried.

Committee Reports: Trainee Evaluation Committee

- The Committee met on May 21st.
- The TEC reported favorably on the status of trainees Bruce Nelson and Ed Marmol.
- There was a brief explanation of the features of the modified Trainee Evaluation Forms. Board members will be sent draft documents for review prior to the anticipated adoption at the June 14 Board meeting for implementation on July 1.
- The TEC reported having discussed a potential replacement for Ole Mackey which has to be a public representative from the Board. Discussion will resume after Commissioner Mackey's replacement has been appointed to the Board.
- Discussion regarding the addition of a fourth pilot member to the TEC raised the question of whether or not a WAC amendment is necessary in order to do so; and, whether or not the Board is in favor of doing so. This matter was deferred.

Pilots' Activity Reports. Captain Richard McCurdy, President, Puget Sound Pilots, reported that there were 653 jobs in April resulting in a three year April average of 611; the busiest day was April 26 with 32 jobs; 53 comp days were assigned and only 33 days taken; two pilots remain on the inactive list due to medical conditions ~ Captain Bock went off major medical on April 16 and Captain Fosse went off major medical on May 3 and back into rotation on May 15; and several pilots have recently attended various requisite training classes.

Gary Nelson, Executive Director, Port of Grays Harbor, stated that activity has been slow with only 7 arrivals through April; 8 are projected for May which will put them back on target at 3 per month for the year; weekly tanker calls related to bio-diesel activity will hopefully sustain the traffic projections; Captain Cooke was able to fulfill all of his license upgrade requirements due to the new WAC provisions having been recently adopted and with the arrival of the appropriate vessels on which to make the designated trips; and Captain D'Angelo is on duty in May.

Miscellaneous Correspondence Review. Retired PS Pilot Captain S.A. Robichaux has written the Board concerning PSP's disbursement and management of his retirement funds. PSP acknowledged they have addressed his concerns. Governor Gregoire has appointed a new environmental representative to the Board, Ms. Elsie Hulsizer, replacing Commissioner Andy Palmer, effective September 1st. Commissioner Ole Mackey has submitted a letter of resignation to the Board and to the Governor and will be stepping down after the June Board meeting. The Department of Ecology has provided a website link to access its latest issue of the Vessel Entries and Transits (VEAT 2006). Steve Dashew, captain of the motor yacht *WIND HORSE* has engaged in an exchange of e-mails in which he expresses his strong objections to our vessel exemption process and fee assessment for foreign pleasure yachts.

Legal Update. Susan Cruise requested a short Executive Session to discuss a matter involving the exam appeals.

Administrator's Report. Peggy Larson urged the Board to begin the process of developing agency request legislation for the 2008 Session. It was moved by Commissioner Hannigan and seconded by Commissioner Snyder to create a "*Legislative Committee*" consisting of one public member, one pilot member and one industry member which will focus on the review of statutes and regulations regarding pilot exam procedures, housekeeping matters, and other necessary provisions. The motion carried. Members of the committee are Chuck Davis, Pat Hannigan and Vince Addington. Chuck Davis asked that e-mails be sent from anyone who wishes to contribute ideas or proposals for consideration.

Commissioner Comments. Commissioner Ole Mackey expressed his appreciation and thanks for the opportunity to have sat on the Board since March 2004.

Confirmation of Next Regular Meeting Date. The next regular meeting is scheduled for Thursday June 14, 2007. The Grays Harbor Pilotage District tariff hearing will begin at 9:30 a.m. followed by the

regular Board meeting. The hearing and meeting will be held in the Fourth Floor Rainier Conference Room, at 2901 Third Avenue, Seattle.

Review of Pilot Physical Examination Reports. After reviewing the physicians' reports it was moved by Commissioner C. Davis and seconded by Commissioner Addington that the physical examination reports for Captains F.A. Coe, V.O. Engstrom, M.R. Flavel, P.M. Hannigan and G.N. Larson be accepted for annual license renewal, Captains D.W. Grobschmit and J.E. Kalvoy for initial licensure and Captain A.L. Fosse for concurrence with the Chairman's interim authorization to return to work. The motion carried. Follow-up information from Captain D'Angelo was received and accepted. Follow-up from one other pilot is still pending. Captain W.A. Bock remains in temporary inactive status due to a medical condition.

An EXECUTIVE SESSION was called from 5:25 p.m. to 5:40 p.m. for purposes of discussing pending litigation. In attendance were Chairman Dudley, Commissioners C. Davis, Mackey, Hannigan, Snyder, Addington, Lee and N. Davis; Susan Cruise, Peggy Larson and Judy Bell. Regular session was reconvened by the Chairman immediately following executive session.

It was moved by Commissioner Lee and seconded by Commissioner Snyder to authorize an extension of a personal service contract related to the pilot exam appeals. The motion carried.

The Chairman adjourned the regular session Board meeting at 5:45 p.m.

Respectfully submitted,

Peggy Larson, Administrator

Harry H. Dudley, Chairman

Charles M. Davis, Vice Chairman

Commissioner Oliver E. Mackey

Commissioner Patrick M. Hannigan

Commissioner William H. Snyder

Commissioner Vincent Addington

Commissioner Craig W. Lee

Commissioner Andrew C. Palmer

Commissioner Norman W. Davis