

## MEETING MINUTES

### STATE OF WASHINGTON ~ BOARD OF PILOTAGE COMMISSIONERS

May 19, 2009

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Present:

Chairman: Harry Dudley

Commissioners: Chuck Davis, Pat Hannigan, Bill Snyder, Craig Lee, Norm Davis, Elsie Hulsizer and Jeff Thompson

Assistant Attorney General: Guy Bowman

Administration: Peggy Larson, Judy Bell

Del Mackenzie, Don Mayer, Mel Flavel, Dan Shaffer, Eric vonBrandenfels, Peter Giese, Bill Bundren, Dave Sanders, Jonathan Ward, Pat Kelly, Andy Coe, Walt Tabler (Administration): Puget Sound Pilots  
*Gary Nelson: Port of Grays Harbor (by telephone)*

Stephen Cooke: Grays Harbor Pilots

Mike Moore, Jordan Royer, Vince Addington, Jim Papp, Polly Kirkpatrick: Pacific Merchant Shipping Association

Mike Gavin, Del Kelly, Bill Bock: Retired Puget Sound Pilots

Jim Townley: Columbia River Steamship Operators Association

Eric Johnson: Washington Public Ports Association

Sean Eagan: Port of Tacoma

Thron Riggs: Oregon Board of Maritime Pilots

Mike Haglund: Columbia River Bar Pilots

Steve Dobbins, Paul Amos, Phil Messey: Columbia River Pilots

Bill Greig, Peter McIsaac: San Francisco Bar Pilots

Loren Lee, Severin Knutsen, Chris Mackenzie, Katharine Sweeney, Bruce Nelson: Public

**PUBLIC HEARING**

A public hearing of the Board of Pilotage Commissioners was convened at 9:35 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 proposed rule reflects a range of adjustments to be charged for pilotage services in the Puget Sound Pilotage District for the 2009-2010 tariff year. The filing was based on separate written proposals submitted by the Puget Sound Pilots and the Pacific Merchant Shipping Association which detailed their requests for rule amendments. The low end of the range was proposed by the Pacific Merchant Shipping Association and the high end of the range was proposed by the Puget Sound Pilots. It is intended that the adopted rule will reflect an across-the-board adjustment to the tariff in an amount within a range between a decrease of 6% and an increase of 5%. Exceptions include two tariff categories specified as follows: 1) No adjustment is proposed to the \$10 *Training Surcharge* which supports pilot training stipends and 2) No adjustment is proposed to the \$2.00 per mile charge for *Transportation to Vessels on Puget Sound* at any new facility or other seldom used terminal. Subsequent to the filing of this proposed rule, Puget Sound Pilots submitted a revision to their request which reflects an increase of 6% rather than 5%, including the two above-noted exceptions and with two additional exceptions to the across-the-board increase as follows: 1) a 25% increase to the *Transportation to Vessels on Puget Sound* category which mirrors current tax fares and 2) a CPI increase of 1.7% to the two transportation charges within the *British Columbia Direct Transit Charge* category.

All written documents submitted in accordance with the timetable established for tariff document submission were considered in today's tariff determination, in addition to all other written and oral testimony from interested parties and members of the public. A joint letter from the Ports of Tacoma, Seattle and Everett asked the Board to take the current market considerations into account in the interest of keeping the international trade sector viable during this severe economic downturn.

Oral testimony on behalf of the Puget Sound Pilots was presented by Walt Tabler and Captain Del Mackenzie. Oral testimony on behalf of the Pacific Merchant Shipping Association was presented by Captain Mike Moore and Jordan Royer. Mr. Eric Johnson, Washington Public Ports Association, also provided oral testimony. Rebuttals followed. The public hearing was closed by Chairman Dudley at 12:00 noon. This hearing was recorded.

### **REGULAR MEETING**

The regular meeting of the Board of Pilotage Commissioners was convened at 12:10 p.m. by Chairman Harry Dudley.

**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 C. Davis and seconded by Commissioner Hulsizer to provide a new 2009-2010 tariff which reflects no adjustment other than the proposed increase in taxi rates from \$2.00 to \$2.50 per mile for transportation to vessels on Puget Sound and a 1.7% CPI increase to transportation charges in the Vancouver BC area and outports. The motion carried unanimously. Commissioner Davis spoke of his concern for the safety of waterborne commerce and port competitiveness and that it is important to communicate the right message in the interest of protecting maritime commerce in Washington State. The four primary groups of stakeholders he referenced are maritime carriers, maritime shippers, current pilots and prospective pilots.

In summary, the proposed rule which reflected a tariff adjustment to be an amount in a range between a decrease of 6% and an increase of 6% across-the-board with the exception of the *\$10.00 Training Surcharge* and the *\$2.00 per mile charge for Transportation to Vessels on Puget Sound at any new facility or other seldom used terminal* differs from the adopted rule which reflects a tariff adjustment of 0% across-the-board with the following two exceptions: 1) *British Columbia Direct Transit Charge* category - Transportation Charge Vancouver Area and the Transportation Charge Outports were increased by 1.7% rather than the proposed adjustment of an amount between -6% and +6%; and 2) *Transportation to Vessels on Puget Sound* category - Taxi Rates were increased from \$2 per mile to \$2.50 rather than the proposed adjustment of an amount between -6% and +6%.

The effective period of the new tariff will be from 0001 hours on July 1, 2009 through 2400 hours on June 30, 2010. All written materials, Power Point presentations and more detailed records of testimony, discussion and motions are contained in the rule-making file. (12:30 p.m.)

**Minutes.** There being no corrections or additions, the April 9, 2009 Minutes stand approved as written.

### **OLD BUSINESS**

**Consideration of Licensure of Captain Katharine Sweeney.** Captain Hannigan requested a Closed Session.

**A CLOSED SESSION was called from 12:35 p.m. to 1:05 p.m. to discuss matters related to Captain Sweeney, trainee performance and pending litigation.** In attendance were Chairman Dudley, Commissioners C. Davis, Hannigan, Snyder, Lee, N. Davis, Hulsizer and Thompson; Guy Bowman, Judy Bell and Peggy Larson.

**Consideration of Licensure of Captain Katharine Sweeney (continued).** It was moved by Commissioner Lee and seconded by Commissioner Snyder that the Board deny Captain Katharine Sweeney a state pilot license pursuant to WAC 363-116-080(5). The motion carried with Commissioner Thompson abstaining.

**Pilot's Report of Incident: SITEAM VOYAGER, 12-6-08.** The Board received a written report submitted by Grays Harbor Pilot, Captain Stephen Cooke, along with supplemental information as requested. He appeared before the Board today to illustrate the vessel move and to answer questions as necessary. While rounding Buoy #11 on a transit to Westport Anchorage, the vessel made unintentional contact with the bottom of the channel. The USCG was called and after reviewing the situation they determined the event was not a grounding. The vessel was inspected and no damage was found. It was moved by Commissioner C. Davis and seconded by Commissioner Thompson that this matter be declared an "Incident without damage and without pilot error". The motion carried.

## **NEW BUSINESS**

**Pilot's Report of Incident: *GLOBAL WISDOM, 4-8-09.*** The Board received a written report submitted by Grays Harbor Pilot, Captain Stephen Cooke. While piloting the vessel inbound to the Weyerhaeuser Terminal in Aberdeen, it made contact with a light assembly mounted on the Highway 101 Bridge. A wind shear from astern to port as the vessel was entering the bridge span caused it to slide along the fendering on the south abutment. There was no damage to the bridge fendering or the ship. Estimated damage to the light bracket was \$1800. It was moved by Commissioner Lee and seconded by Commissioner Thompson that this matter be tabled until the Board has obtained a copy of the US Coast Guard report. The motion carried. Chairman Dudley asked Captain Cooke to inquire as to the status of a report, if in fact, an investigation is underway.

**Pilot's Report of Incident: *GREAT LAND, 4-13-09.*** The Board received a written report submitted by Puget Sound Pilot, Captain Peter Giese. While attempting to dock the vessel at Berth 7B in Tacoma's Sitcum Waterway, damage was sustained to four dock pilings. This was due in part to some wind influence and the unique configuration of the ship's bow in combination with the design of the camel/piling system not adequately being able to cushion and spread the load of the ship. It was moved by Commissioner Lee and seconded by Commissioner Thompson that this matter be declared an "Incident with damage and without pilot error". The motion carried.

**Pilot's Report of Incident: *POLAR ADVENTURE, 5-5-09.*** The Board received a written report submitted by Puget Sound Pilot, Captain David Sanders. While undocking the vessel from the US Oil berth the use of the ship's bow thruster caused an oil containment boom to get washed and tangled under a floating walkway. The thruster was eventually stopped and the vessel proceeded away from the dock without further incident. It was moved by Commissioner Lee and seconded by Commissioner Hannigan that this matter be declared an "Incident without damage and without pilot error". The motion carried.

**Pilot's Report of Marine Safety Occurrence: *EVER UBERTY, 4-10-09.*** The Board received a written report submitted by Puget Sound Pilot, Captain David Sanders. While piloting the vessel inbound from Port Angeles to Tacoma PCT the vessel experienced rudder problems on more than one occasion. VTS was notified and it was decided to call for a tug escort to Tacoma. A second pilot boarded in the harbor and the vessel was docked without incident. It was moved by Commissioner Lee and seconded by Commissioner Thompson that this report be filed as a Marine Safety Occurrence. The motion carried.

**Pilot's Report of Marine Safety Occurrence: *HYUNDAI No. 203, 4-24-09.*** The Board received a written report submitted by Puget Sound Pilot, Captain Robert Kromann. While transiting northbound just north of West Point the pilot was notified of an oil leak in the economizer. The vessel turned around to anchor in Seattle Elliott Bay West Anchorage. VTS and COTP were notified. The pilot disembarked due to an estimated lengthy downtime for repairs. It was moved by Commissioner Thompson and seconded by Commissioner Hannigan that this report be filed as a Marine Safety Occurrence. The motion carried.

**Request for Approval of an Additional Operator: *VICTORIA CLIPPER.*** Clipper Navigation has requested Board approval to add a vessel master for the operation of the *VICTORIA CLIPPER*. It was moved by Commissioner C. Davis and seconded by Commissioner Hulsizer that Captain Donald Johnson be added to the list of Board-approved vessel operators for the *VICTORIA CLIPPER*. The motion carried. A renewed federal license and STCW for Captain William Tiffany was also reviewed and accepted.

**Consideration of Request for Vessel Exemption: *Motor Yacht MISS MICHELLE.*** A petition for vessel exemption was received regarding the foreign flagged 130', 333 gross ton Motor Yacht *MISS MICHELLE*. 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 Thompson and seconded by Commissioner N. Davis that the Board grant a three-month exemption to the *MISS MICHELLE* as requested, beginning June 11, 2009, so long as it remains in the charge of Captain Michel Lagace. The motion carried.

**Consideration of Request for Renewal of Vessel Exemption: Motor Yacht VANGO.** A petition for renewal of vessel exemption was received regarding the foreign flagged 164', 490 gross ton Motor Yacht VANGO. 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 Thompson and seconded by Commissioner N. Davis that the Board grant a renewal of exemption for the VANGO for one year beginning June 1, 2009, so long as the vessel remains in the charge of Captain David Hagerman. The motion carried.

**Consideration of Request for Vessel Exemption: Motor Yacht LADY LILY.** A petition for vessel exemption was received regarding the foreign flagged 112', 208 gross ton Motor Yacht LADY LILY. 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 Thompson and seconded by Commissioner N. Davis that the Board grant a three-month exemption to the LADY LILY as requested, beginning July 5, 2009, so long as it remains in the charge of Captain Robert Crocker. The motion carried.

It was noted that information as to whether or not these yachts are equipped with an Automatic Identification System (AIS) is not consistently indicated on the petition forms. In order to learn this about each exempted vessel, a modified vessel exemption form will be made available which offers a check list of navigational aids recommended by the Board.

**Discussion of Statements of Policy Adopted 5-9-02, 11-14-02, 9-8-05 Which Apply to Old WAC 363-116-075; and Interpretation of Present WAC 363-116-0751 Regarding GRT or GT(ITC).** An inquiry has come to the Board from a potential future pilot exam applicant who is seeking clarification of WAC 363-116-0751. The qualifying tonnage categories of vessels on which to obtain sea service are described as a measurement in GRT or GT(ITC). His question is whether a vessel can be one or the other, GRT or GT(ITC). It was determined that the word or means just that and as long as the vessel meets the minimum measurement of either GRT or GT(ITC) it satisfies the regulation's requirement. The tonnage categories as written do not describe specific equivalencies. The review of the Statements of Policy pertaining to old WAC 363-115-075 was deferred to the next meeting.

**2009 Annual Tariff Hearings Preparation: GHPD** – A 2009-2010 written tariff proposal from the Port of Grays Harbor has been submitted to the Board in addition to the 2008 Audited Financial Statement in accordance with the timetable established for tariff document submission. A CR-102 has been filed setting a public hearing for June 11, 2009, at 9:30 a.m. The deadline for public comments and any other written proposals is June 4th. Any member of the public will also have an opportunity to testify at the public hearing.

**2009 Legislative Status Report.** House Bill 2120 "An act relating to pilotage tariffs; amending RCW 88.16.035; and adding a new section to chapter 81.04 RCW." which called for the Utilities and Transportation Commission to provide input to our Board and the Board to consider such input in setting pilotage rates (other than Grays Harbor) is no longer viable. SSB 5352 "An act relating to transportation funding and appropriations." a section of which extends the Board's authority to increase pilot license fees two more years through June 30, 2011 has been signed into law. SSB 6095 "An act relating to the Puget Sound pilotage district tariff." has been signed into law. It provides, in part, that "as an element of the Puget Sound pilotage district tariff, the Board may consider pilot retirement plan expenses incurred in the prior year in either pilotage district. However, under no circumstances shall the state be obligated to fund or pay for any portion of retirement payments for pilots or retired pilots." A Senate Confirmation Hearing for Commissioners Chuck Davis, Elsie Hulsizer, Craig Lee, Bill Snyder, Pat Hannigan and Jeff Thompson was held on February 26<sup>th</sup>. Each Commissioner was recently notified by Senator Joe McDermott, Majority Assistant Floor Leader, that none of them were confirmed before the close of the legislative session on April 27<sup>th</sup>.

**Activity Reports.** Gary Nelson, Executive Director, Port of Grays Harbor, reported that there were 4 vessel arrivals in April and 14 year-to-date; the Port is on target with their new liner service for mid-June and is expecting a log ship also in June at the Port of Grays Harbor; and Captain D'Angelo is on duty this month.

Captain Del Mackenzie, President, Puget Sound Pilots, reported there are currently 55 licensed pilots including the president; there were 592 jobs in April compared to 625 in April 2008 resulting in a three year April average of 623; overall traffic is off about 4.07% or 84 assignments year-to-date; in April 9 comp days were created and 27 days taken for a net decrease of 18; Captains Gary Hurt, Tom Jacobs and Vic Engstrom were on medical leave in April and two have recently returned to work; 2 pilots attended E-Navigation classes; 3 attended BRM and 2 attended manned model school in Port Revel.

## **Committee Reports.**

### **Trainee Evaluation Committee:**

- The TEC met on April 29<sup>th</sup>.
- Training programs for Captains Jones, Seymour, Moreno, Brusco and Caspers were reviewed. Several conning quizzes have been administered as the three new trainees move through their programs. Captain Scragg will begin training on May 1<sup>st</sup>.
- Last month license upgrade modifications were made for the trainees who are completing their third license year by allowing them to take upgrade trips on loaded petroleum tankers of a larger tonnage in the last 60 days of their upgrade period. Because they are still having difficulty finding the proper size vessel on which to ride, they are now being allowed to upgrade on loaded petroleum tankers of up to 60,000 GT(ITC) during the first 60 days of their upgrade period if they ride with a Board-Approved Training Pilot.
- Trainees Stephen Jones and Larry Seymour are nearing completion of their extended training programs on May 31<sup>st</sup>. It was moved by Commissioner Snyder and seconded by Commissioner Lee that the TEC be granted authority to continue one or both training programs as appropriate from May 31<sup>st</sup> to June 11<sup>th</sup> (the day of the next Board meeting). The motion carried. Closer to May 31<sup>st</sup> the TEC will meet to consider any extensions.

**Legislative/WAC Committee:** No activity to report at this time.

**Work Group Report: Extension of Route and Contract Pilotage.** No activity to report at this time.

**Legal Update.** Guy Bowman stated that a hearing date has been set for October 12-15, 2009 in the matter regarding Captain Bruce Nelson's appeal of the Board's decision to deny him a state pilot license. Also a request for an administrative law judge has been made in the matter of Captains Thomas Webster, David Surface and Bruce Toney who are challenging the Board's determination of their Simulator Evaluation scores on the 2008 pilot examination.

**Administrator's Report.** Captain Vic Engstrom has returned to work after three months of medical leave. Pursuant to WAC 363-116-082(6), because he was unable to pilot for more than 45 days during his first five years as a new pilot he has requested a revised schedule of limitations. It was moved by Commissioner Thompson and seconded by Commissioner Hannigan that his schedule of license limitations be revised and extended three months (commensurate with the length of time he was unable to pilot) in order to complete one full year in his current license year and again next year, his fifth license year. The motion carried.

Peggy Larson reported that she was notified late last week by a member of Governor Gregoire's Boards and Commissions Appointment staff that the Governor's staff considered that there was excessive stakeholder interference with their appointment process to select our new public representative and that, as a result of their assessment, they have voided the entire list of those who have applied for the position to date. The Governor's staff has requested that the Board recruit and vet three new applicants for consideration by the Governor. It was the consensus of the Board that the input known to have been provided to the Governor's staff by the major stakeholders (pilots and industry) was not excessive and is specifically provided for in the Boards and Commissions information provided on the State web site. Chairman Dudley was asked by the Board to voice the Board's objections and pursue a proper and expedient resolution.

**Public Comments.** Mr. Loren Lee introduced himself as one of the current applicants seeking appointment to our Board as a public representative.

**Commissioner Comments.** Commissioner Lee thanked Commissioner Chuck Davis for his even-handed and balanced consideration of the tariff while keeping the focus on the citizens of our state.

**Confirmation of Next Regular Meeting Date.** The next regular meeting is scheduled for Thursday, June 11, 2009. 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 First Floor Agate Conference Room, at 2901 Third Avenue, Seattle.

**Review of Pilot Physical Examination Reports.** After reviewing the physicians' reports it was moved by Commissioner Thompson and seconded by Commissioner Lee that the physical examination reports for Captains M.E. Blake, M.R. Flavel, P.M. Hannigan, G.D. Hurt, M.I. Johnson, G.N. Larson, B.L. Michelson, S.E. Mork, S.D. Semler and V.O. Engstrom be accepted for annual license renewal and Captain L.A. Seymour for trainee license renewal/initial licensure. The motion carried. Captain Gary Hurt was found fit for duty and returned to work on April 17, 2009, as well as Captain Vic Engstrom on May 1, 2009. The Board affirmed Chairman Dudley's action to reinstate their licenses to active status. Captain T.A. Jacobs remains unfit for duty.

There being no further business to come before the Board, the Chairman adjourned the regular session Board meeting at 2:50 p.m.

Respectfully submitted,

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Peggy Larson, Administrator

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Harry H. Dudley, Chairman

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Charles M. Davis, Vice Chairman

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**VACANT**

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Public Member

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Commissioner Patrick M. Hannigan

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Commissioner William H. Snyder

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Commissioner Craig W. Lee

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Commissioner Jeffrey L. Thompson

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Commissioner Norman W. Davis

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Commissioner Elsie J. Hulsizer