

MEETING MINUTES

STATE OF WASHINGTON BOARD OF PILOTAGE COMMISSIONERS

May 8, 2008

Present:

Chairman: Harry Dudley

Commissioners: Chuck Davis, Ole Mackey, Pat Hannigan, Bill Snyder, Vince Addington, Craig Lee,
Norm Davis, Elsie Hulsizer

Assistant Attorney General: Susan Cruise

Administration: Peggy Larson and Judy Bell

Del Mackenzie, Don Mayer, Mel Flavel, Dan Shaffer, Joe Semler, Eric vonBrandenfels, Denny
Stensager, John Harris, Peter Giese, Richard McCurdy, Bill Bundren, Dave Sanders, Walt
Tabler (Administration): Puget Sound Pilots

Gary Nelson, Mary Nelson, Captain Robert D'Angelo: Port of Grays Harbor/Grays Harbor Pilots

Mike Moore, Jordan Royer, Matthew Darbous, Jim Papp, Polly Kirkpatrick: Pacific Merchant Shipping
Association

Jeff Shaw: Polar Tankers, Inc.

Scott Craig: Crowley Marine

Mike Gavin, Del Kelly, Ben Watson, Robert Moss, Carl Johannes, Byron Joyce, Bill Bock: Retired pilots

Rick Spoonemore, Tom Paul, Kelby Fletcher: Attorneys

Ron Kinsey, Ian Brosnan: US Coast Guard Sector Seattle

Stephen Semler: Pilot Trainee

Gary Lewis: Columbia River Bar Pilot

Bill Greig: San Francisco Bar Pilot

Kevin Davis: Columbia River Pilots/San Francisco Pilots

Chris Philips: Pacific Maritime Magazine

Diane Semler, Linda Carey, Chris Mackenzie: 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 filed rule reflects a range of adjustments to be charged for pilotage services in the Puget Sound Pilotage District for the 2008-2009 tariff year. The filing was based on separate written requests 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 (PMSA) and the high end of the range was proposed by the Puget Sound Pilots (PSP). Upon consideration of all written and oral testimony, it is anticipated that the adopted rule will reflect an across-the-board adjustment to the tariff in a range between a decrease of 10.3% and an increase of 9.2%. Subsequent to the filing of this proposed rule, PSP submitted a request for consideration that reflects an adjusted 10.1% increase. Exceptions include some tariff categories which are outside of this range or specifically allocated to new charges and are specified as follows: The proposed rule reflects no adjustments in the *Transportation* category. The proposed rule reflects an increase of \$5 in the *Training Surcharge* category to support pilot training stipends. The proposed rule reflects a new category, *British Columbia Direct Transit Charge*, resulting from the enactment of 2008 statutory amendments to the Pilotage Act, specifically RCW 88.16.035(1)(e); these charges, already established outside of Board rules until now, reflect a range of adjustments proposed by PSP and PMSA. The proposed rule also reflects three versions of optional amendatory language describing the *LOA Rate Schedule* as it relates to the support of pilot retirement plans.

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.

Oral testimony on behalf of the Puget Sound Pilots was presented by Walt Tabler, Captain Eric vonBrandenfels and Captain Del Mackenzie. Oral testimony on behalf of the shipping industry was presented by Captain Mike Moore. Retired pilots, Captains Mike Gavin, Del Kelly and Ben Watson spoke of their concerns regarding pension issues. Rebuttals followed. The public hearing was closed by Chairman Dudley at 2:00 p.m. This hearing was recorded. (Thirty minute lunch break)

An EXECUTIVE SESSION was called from 2:30 p.m. to 2:50 p.m. for purposes of discussing potential litigation and pilot physical examination reports. In attendance were Chairman Dudley, Commissioners C. Davis, Mackey, Hannigan, Snyder, Addington, Lee, N. Davis and Hulsizer; 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 Addington to increase the training stipend surcharge from \$5 to \$10 as proposed. The motion carried. It was moved by Commissioner Addington and seconded by Commissioner Lee to provide a new 2008-2009 tariff which includes an across-the-board decrease of 10.3% to all tariff categories except *Transportation* and *Training Surcharge*. A motion to amend was made by Commissioner C. Davis and seconded by Commissioner Mackey to change the amount to a plus 4.0%. A motion to amend was made by Commissioner Lee and seconded by Commissioner Addington to change the amount to a minus 1.5%. The second motion to amend (-1.5%) failed with a vote of 2 in favor and 6 opposed. The first motion to amend (+4.0%) carried with a vote of 6 in favor and 2 opposed. The original motion as amended carried with a vote of 6 in favor and 2 opposed.

It was moved by Commissioner Addington and seconded by Commissioner Lee that the language regarding the *British Columbia Direct Transit Charge* be adopted as filed in the CR-102 with the following changes: ~~"In the event a pilot consents to~~ The following additional charges shall apply to a pilot boarding or debarking a vessel at a British Columbia port, ~~the following additional.~~ These charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:" A motion to amend was made by Commissioner C. Davis and seconded by Commissioner Lee that the language shall read as follows: "In the event that a pilot consents to board or deboard a vessel at a British Columbia port, which consent shall not unreasonably be withheld, the following additional charges shall apply in addition to the normal LOA, tonnage and other charges provided in this tariff that apply to the portion of the transit in U.S. waters:" The amended motion carried unanimously.

It was moved by Commissioner Hannigan and seconded by Commissioner Snyder that the schedule of six *British Columbia Direct Transit Charges* be adopted as filed in the CR-102 except that the *Direct Transit Fee* be increased from \$2150 to \$3036. A motion to amend was made by Commissioner Addington and seconded by Commissioner C. Davis that a 4% increase be applied to four of the *British Columbia Direct Transit Charges* and the two transportation charges be increased by CPI of 3.9% all rounded to whole dollars. The motion to amend carried unanimously and the original motion carried unanimously.

Three options were proposed to amend the introductory paragraph describing the *LOA Rate Schedule* as it relates to the support of pilot retirement plans. A fourth option to delete the words "retirement fund contributions" without adding any amendatory language was also discussed. Since this fourth option was not originally presented as a consideration it was moved by Commissioner Hannigan and seconded by Commissioner Snyder to re-file with the Code Reviser all four options of amendatory language for a future public hearing. The motion carried with a vote of 7 in favor and Commissioner

Mackey abstaining. It was moved by Commissioner Addington and seconded by Commissioner Hulsizer that no action be taken to amend this language at this time. The motion carried unanimously.

It was moved by Commissioner Snyder and seconded by Commissioner Mackey that wherever the word "fee" appears in the tariff, it be replaced with the word "charge". The motion carried.

The effective period of the new tariff will be from 0001 hours on July 1, 2008 through 2400 hours on June 30, 2009. 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 which reflected a tariff adjustment in a range between a decrease of 10.3% and an increase of 10.1% across-the-board with noted exceptions being the *Transportation and Training Surcharge* categories differs from the adopted rule which reflects a tariff increase of 4% across-the-board with noted exceptions. The proposed new category called *British Columbia Direct Transit Charge* consisting of a breakdown of six charges was adopted but with different language and amounts than proposed. The adopted rule regarding this new category reflects a 4% increase to all but the two transportation charges to which a 3.9% CPI increase was applied. None of the proposed amendatory language describing the *LOA Rate Schedule* was adopted, but will be discussed further at a future hearing. The word "fee" was replaced with the word "charge" throughout the text of the rule.

Minutes. Regarding the April 10, 2008 Minutes, Susan Cruise requested that the record state the reason for the Executive Session (on page four) be that of "potential litigation". It was moved by Commissioner Addington and seconded by Commissioner Lee that the April 10, 2008 Minutes be approved as amended. The motion carried. Regarding the April 24, 2008 Minutes, there being no corrections or additions they stand approved as written.

OLD BUSINESS

Consideration of Proposed Letter Regarding Pilot Retirement Plans. This item was deferred.

Consideration of Licensure of PSPD Trainee: Captain Bruce Nelson. The Board received a public records request from Captain Nelson's attorney on April 29, 2008. Until such time that the Board has responded and they have had time to prepare a presentation to the Board, they have requested that this matter be deferred. It was moved by Commissioner Snyder and seconded by Commissioner Lee to defer this matter to the next regular Board meeting. The motion carried.

NEW BUSINESS

Review and Consideration of Licensure of PSPD Trainee: Captain Stephen Semler. 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 recommended the issuance of a state pilot license to Captain Stephen Semler. It was moved by Commissioner Snyder and seconded by Commissioner Mackey that Captain Stephen Semler be issued a state pilot license for the Puget Sound Pilotage District. The motion carried. License #174 was dated today making him eligible for dispatch.

Approval of Pilot License Upgrade Programs for Captains Marmol, J.K. Ward and J.E. Ward. It was moved by Commissioner Snyder and seconded by Commissioner Lee that the license upgrade programs for Captains Ed Marmol and John K. Ward be approved as drafted by the TEC. The motion carried. They are nearing completion of their first and second license years respectively.

Captain Jonathan E. Ward is nearing the anniversary of his fifth license year; however, he lost five months of active piloting during a temporary medical leave which delayed the beginning of his fifth year of active piloting. After review of WAC 363-116-082(6) it is the Board's desire that Captain J.E. Ward's license upgrade period be deferred five months so that he will have completed one full year of active piloting prior to his license limitations being lifted. His license upgrade program will run from September 7, 2008 to January 7, 2009.

Consideration of Request for Vessel Exemption: Motor Yacht *MARAMA*. A petition for vessel exemption was received regarding the foreign flagged 122.7', 456 gross ton Motor Yacht *MARAMA*. 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 April 30, 2008, subject to final Board approval at today's meeting. It was moved by Commissioner Mackey and seconded by Commissioner Addington that the Board concur with his action and issue the exemption for the *MARAMA* for one year so long as it remains in the charge of Captain Paul Lawrence. The motion carried.

Consideration of Request for Vessel Exemption: Motor Yacht *ALUMERCIA*. A petition for vessel exemption was received regarding the foreign flagged 123', 377 gross ton Motor Yacht *ALUMERCIA*. 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 April 30, 2008, subject to final Board approval at today's meeting. It was moved by Commissioner Mackey and seconded by Commissioner Addington that the Board concur with his action and issue the exemption for the *ALUMERCIA* for one year so long as it remains in the charge of Captain Joannes Mestrom. The motion carried.

Pilot's Report of Marine Safety Occurrence: *ATB OCEAN RELIANCE*, 3-31-08. This item was deferred.

Pilot's Report of Marine Safety Occurrence: *PROTEUS*, 4-22-08. The Board has received a written report submitted by Puget Sound Pilot, Captain Vic Engstrom. While proceeding to anchor in Tacoma's Commencement Bay, the ship's main engine failed. A nearby tug was called to assist. Shortly the engine engaged. The USCG was notified. PSP was also notified so the next pilot dispatched for the docking of this vessel had this information. Two days later the pilot learned from the Coast Guard that the vessel master reported the cause to be a 20-second delay due to a communication problem with the engine room. It was moved by Commissioner C. Davis and seconded by Commissioner Mackey that this report of a navigational safety concern be filed as a Marine Safety Occurrence. The motion carried.

Request for Consideration of an "Extension of Route" for State-Licensed Pilots in the Grays Harbor Pilotage District. Captains Stephen Cooke and Robert D'Angelo have submitted letters requesting Board approval of an extension of route on their state licenses for the Grays Harbor Pilotage District to include Puget Sound Pilotage District waters without taking the pilot examination for that district. It is their request that they be added to the end of the list of successful applicants from the 2005 PSPD exam who are awaiting training. Because of the complexity of this issue Commissioners C. Davis and Addington volunteered to work with Gary Nelson and Kelby Fletcher, attorney for Captain Cooke, to explore the Board's legal authority, consider the scope of the request and its effects, and prepare a report back to the Board.

Puget Sound Pilots' Recommendations of Safe Practices Review Committee. In a letter dated April 30, 2008 from Puget Sound Pilots, a recommendation was made to the Board from PSP's *Safe Practices Review Committee* to consider adopting certain measures outlined in their letter. It was moved by Commissioner C. Davis and seconded by Commissioner Snyder that the Board file a CR-101 announcing its intent to consider rule making concerning issues related to post-incident procedures involving the pilot and the vessel. The motion carried. Discussion of their committee's other recommendations will be deferred to the next regular Board meeting.

Procedures for Submittal of 2009 Agency Request Legislation. The schedule for submission of agency-sponsored legislation has been released by the Governor's office. Proposed legislation for consideration during the 2009 Legislative Session is due by August 18, 2008 if it has a budget impact, or September 29, 2008 if no fiscal impact. It is undetermined at this time if the Board will have any legislative recommendations for the 2009 Legislature.

2008 Annual Tariff Hearings Preparation. GHPD – A 2008-2009 written tariff proposal from the Port of Grays Harbor has been submitted to the Board in addition to the 2007 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 12, 2008, at 9:30 a.m. The deadline for public comments and any other written proposals is June 5th. Any member of the public will also have an opportunity to testify at the hearing.

Activity Reports. These reports will be heard next month.

Committee Reports.

Trainee Evaluation Committee:

- The TEC met on May 7th.
- It was moved by Commissioner Snyder and seconded by Commissioner Lee that the Board authorize Captain Stephen Jones and Captain Larry Seymour to begin training on August 1, 2008. The motion carried with Commissioner Addington abstaining.
- The TEC reviewed the status of trainee Katharine Sweeney who is in her eighth month and first 30-day extension of pilot training through May 31st. It was moved by Commissioner Snyder and seconded by Commissioner Lee that Captain Sweeney's training program be extended for one additional month through June 30th and that the TEC be authorized to develop the training program addendum. The motion carried.

2008 WAC Committee: No report.

2008 Pilot Exam Committee: This report will be heard next month.

Miscellaneous Correspondence. Clipper Navigation has requested Board approval to add another vessel master for the operation of the *VICTORIA CLIPPER*. It was moved by Commissioner Snyder and seconded by Commissioner Lee that Captain William Marschner be added to the list of Board-approved vessel operators for the *VICTORIA CLIPPER*. The motion carried.

Retired Puget Sound Pilot Captain Eric Lichty has submitted a written request for Board consideration to become a temporary contract pilot during seasonal and increased workload periods beginning in 2009. Consideration of this request was added to the assignment for Commissioners C. Davis and Addington regarding the Extension of Route discussed earlier today.

Administrator's Report. Peggy Larson reported that the CR-102 concerning the proposed WAC language amendments has been filed for public hearing on June 12th and is posted on the Board's web site.

Confirmation of Next Regular Meeting Date. The next regular meeting is scheduled for Thursday, June 12, 2008. A public hearing on the Grays Harbor Tariff and multiple other WACs will begin at 9:30 a.m. followed by the regular monthly 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, P.M. Hannigan, J.E. Kalvoy, B.S. Knowles and G.N. Larson be accepted for annual license renewal. The motion carried. It was moved by Commissioner C. Davis and seconded by Commissioner Snyder that the physical examination report for Captain Stephen Semler be accepted for initial licensure. The motion carried. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that acceptance of Captain M.R. Flavel's physical examination report be deferred pending receipt of follow-up information. The motion carried. Follow-up information as requested was submitted on behalf of Captain J.B. Harris. Captain M.D. Wood remains in temporary inactive status due to his current medical condition.

There being no further business to come before the Board, the Chairman adjourned the regular session Board meeting at 5:15 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 Norman W. Davis

Commissioner Elsie J. Hulsizer