

MEETING MINUTES

STATE OF WASHINGTON BOARD OF PILOTAGE COMMISSIONERS

June 8, 2006

Present:

Chairman: Dudley

Commissioners: C. Davis, Mackey, Niederhauser, Hannigan, Addington, Lee, Palmer and N. Davis

Assistant Attorney General: Susan Cruise

Administration: Peggy Larson and Judy Bell

Gary Nelson, Mary Nelson: Port of Grays Harbor

Richard McCurdy, Rob Kromann, Del Mackenzie, Walt Tabler: Puget Sound Pilots

Mike Moore, Luis Kohls, Jim Papp: Pacific Merchant Shipping Assn

Jeff Shaw: Polar Tankers

Mike Blake: pilot trainee

Larry Seymour: pilot aspirant

Bruce Nelson, David Grobschmit, Eric Klapperich, Katharine Sweeney, Steve Jones: pilot applicants

PUBLIC HEARING

A public hearing of the Board of Pilotage Commissioners was convened at 9:40 a.m. by Chairman Harry Dudley at 2901 Third Avenue, Seattle, Washington.

WAC 363-116-185: Tariffs, and Pilotage Rates for the Grays Harbor Pilotage District. RCW 88.16.035(4) requires the Board of Pilotage Commissioners to annually fix pilotage tariffs. The filed rule as proposed by the Port of Grays Harbor reflects a 3% increase in the Vessel Draft Charge, the Vessel Tonnage Charge, the Minimum Net Registered Tonnage Charge, and the charge per vessel movement calling at Terminal No. 2. A new provision is proposed that will allow a vessel to berth at Terminal No. 4 (without loading or discharging cargo) in the case that Terminal No. 2 is not available upon arrival. It is proposed that the charge for an extra vessel (in case of tow) is increased by .68%. It is also proposed that the Pension Charge be decreased by \$9 per pilotage assignment, including cancellations. All other tariff charges remain the same. A written proposal dated May 9, 2006, considered by the Board today, was submitted by Gary Nelson, Executive Director of the Port of Grays Harbor. The GHP 5-year Capital Spending Plan and 2005 year-end audited Financial Statement, previously submitted to the Board, were also considered in today's tariff determination. Oral comments in support of the proposal were presented by Gary Nelson for the Port of Grays Harbor and Luis Kohls for PMSA. There was no other testimony presented. Chairman Dudley closed the public hearing at 9:45 a.m. This hearing was recorded on audiotape.

REGULAR MEETING

The regular meeting of the Board of Pilotage Commissioners was convened immediately following the public hearing.

Consideration of Preceding Hearing: WAC 363-116-185. Following the Board's review and consideration of all written and oral testimony, it was moved by Commissioner Hannigan and seconded by Commissioner Mackey that the Board adopt the proposed 2006/2007 Grays Harbor Pilotage District tariff (described above) as filed with the Code Reviser and outlined in the tariff recommendation letter dated May 9, 2006 from the Port of Grays Harbor. The motion carried.

The new tariff shall be in effect 0001 hours, August 1, 2006 through 2400 hours July 31, 2007. All written materials and more detailed records of testimony and discussion are contained in the rule-making file. (9:45 a.m.)

Minutes. It was suggested by Chairman Dudley that the total count of votes regarding the Puget Sound Pilotage District rate hearing be detailed to show a total of nine votes rather than eight. It was

moved by Commissioner C. Davis and seconded by Commissioner Palmer that the record reflect that the ninth vote in each of the three motions was an abstention by Chairman Dudley and that the May 11, 2006 Minutes be approved as amended. The motion carried.

OLD BUSINESS

Consideration of Petition for Vessel Exemption: Motor Yacht *BLUE STAR*.

Consideration of Petition for Vessel Exemption: Motor Yacht *MEA CULPA*.

Consideration of Request for Additional Approved Operator: *M/V TAMEME MARINO*.

Consideration of Renewal of Vessel Exemption: Motor Yacht *LADY ZELDA*.

Consideration of Petition for Vessel Exemption: Motor Yacht *BARCETTA*.

The above five vessel exemption requests were all given interim approval by Chairman Dudley prior to today's meeting. It was moved by Commissioner Lee and seconded by Commissioner Addington that the Board concur with the Chairman's action and the exemptions stand approved. The motion carried.

Consideration of Petition for Vessel Exemption: Motor Yacht *ORION*. A petition for vessel exemption was received regarding the foreign flagged 124', 268 gross ton Motor Yacht *ORION*. 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 C. Davis and seconded by Commissioner Addington that the Board grant a twelve-month exemption as requested, to the *ORION* so long as it remains in the charge of Captain Thomas Tomlinson. The motion carried.

NEW BUSINESS

Proposed Rule-Making Regarding WAC 363-116-078(10): Training Program, Stipend. The TEC developed proposed changes to WAC 363-116-078(10) which intend to provide clarity, resolve difficulties experienced with the current training program and amend the criteria for stipend eligibility. Susan Cruise added her comments to the draft and included an additional amendment to subsection (5). Other proposed amendments were also discussed. It was moved by Commissioner Hannigan and seconded by Commissioner C. Davis that a revised draft, including the amendments discussed today, be prepared for filing in accordance with rule-making procedures. The motion carried. Commissioner Niederhauser stated his desire for further amendments but since they don't apply to trainees currently on the waiting list, he was willing to defer their consideration for adoption to another time.

Discussion and Consideration of WAC 363-116-065: Number of Pilots. The Board is mandated under WAC 363-116-065 to ". . . set the number of pilots to be licensed in each pilotage district that is best calculated to optimize the operation of a safe, fully regulated, efficient, and competent pilotage service. In addition, the Board shall plan ahead to ensure, to the extent possible, that pilot trainees enter the training program set forth in WAC 363-116-078 so that they complete the training program in a timely manner." Recognizing the complexity of this task it was determined that over the next few months the Board will engage in collecting and analyzing information and data necessary to accomplish this goal. It was moved by Commissioner Hannigan and seconded by Commissioner Mackey that the Board publish a public notice which asks for the submittal of input, such as questions to be considered and data needs to be established, by July 10, 2006 for distribution to the Board on July 13, followed by an initial review by the Board at the August Board meeting. The motion carried. At this time it has not been established what the needs are in terms of starting the next trainee/trainees. It is anticipated that the six current trainees will all have completed their training programs by September.

Committee Reports: Trainee Evaluation Committee.

- Pilot trainee John Ward has completed his initial evaluation program. It was moved by Commissioner Niederhauser and seconded by Commissioner Mackey that the TEC recommends to the Board that Captain Ward be approved to advance in the training program pursuant to WAC 363-116-078(5)(c). The motion carried.

- Captain Jonathan Ward has completed his requisite license upgrade trips for which Chairman Dudley has given interim approval. It was moved by Commissioner C. Davis and seconded by Commissioner Palmer that the Board concur with the Chairman's action. The motion carried.
- Susan Cruise responded to the TEC's request for legal guidance regarding its suggestion to abolish the Policy Statement entitled "*Qualifications of Pilot Applicants Under WAC 363-116-075(1) When Experience is on Vessels Employing More Than One Master*" which allows sea time for staff captains and chief mates as qualifying to take a pilot exam. Another suggestion was to expand the Policy Statement to include more restrictive language that narrows the qualifications. Further consideration will be given by the TEC.
- Five of the six trainees will be finishing their minimum seven-month training programs just prior to the July 13 Board meeting. The TEC will review their status at its meeting today and again on July 12 in order to forward a recommendation regarding their licensure to the Board.
- The Board was presented with a draft of statutory changes for consideration as Agency Request Legislation for 2007. The primary intent is to amend the RCW to allow, if necessary, a Puget Sound pilot exam to be given prior to July 1, 2008 that would not require a pilotage endorsement on the federal license. This could potentially open the door for more applicants to take an exam if it was determined that an exam is necessary in 2007. It was moved by Commissioner Hannigan and seconded by Commissioner C. Davis that the proposed draft amendments, including some housekeeping items, be drafted and presented for stakeholder comments at the July 13 regular Board meeting. The motion carried with Commissioner Lee abstaining. It will be determined on July 13 if the Board intends to pursue an Agency Request Legislation submittal. The proposal will be posted on the BPC web site.
- It was moved by Commissioner Lee and seconded by Commissioner Addington that Chairman Dudley be directed to interview Captain R.L. D'Angelo with respect to his evaluations of Captain Cooke's performance on his license upgrade trips. The motion carried. The interviewer will request a written summary from Captain D'Angelo that will supplement the license upgrade trip reports and will be considered in order for Captain Cooke's first-year license limitations to be lifted by mid-July.

Miscellaneous Correspondence Review. A letter has been received by one of the Puget Sound pilot exam appellant's attorney asking for information regarding their understanding of the Training Program regulation WAC 363-116-078. Other communications are ongoing as the appeal process unfolds. A pre-hearing conference is scheduled for this month which involves all five appellants, the attorneys and Chairman Dudley.

Legal Update. Susan Cruise responded to an inquiry following last month's Puget Sound tariff hearing relative to setting the Target Net Income (TNI). She has determined that the Board lacks legal and statutory authority to set elements of a private pension plan. In the past, during a tariff proceeding, the Board has only acknowledged or recognized that TNI had been set and agreed to by the pilots and the shipping industry representatives.

Administrator's Report. Peggy Larson announced that the Safety Bulletin #06-1 regarding deep water anchoring has been distributed and posted on the BPC web site. She addressed the spreadsheet prepared by agency staff that differs slightly from the TEC display of data regarding the proposed admittance of applicants into training. At a TEC meeting later today, the matter will be discussed further with the intent of making a recommendation to the Board regarding when to begin the next trainee/s.

Pilots' Activity Reports. Captain Richard McCurdy, President, Puget Sound Pilots, reported that there were 711 jobs in May compared to a 672 average for the past 3 Mays; Captain Fosse remains on medical leave and anticipates returning to work soon; Captain W.K. Anderson is on medical leave; no pilots are scheduled for training classes this month; it was noted that the PSP audited financial statement for last year and some previous years contained an error relative to the cost associated with comp day liability ~ PSP will send the Board a letter containing corrected historical

data; and the *SWAN* has arrived at Port Angeles and will be transporting sections of the new Tacoma Narrows Bridge deck later in the month.

Gary Nelson, Executive Director, Port of Grays Harbor, reported that vessel arrivals YTD are at 17 with 2 anticipated in June which is about 25% fewer than projected; and Captain Cooke is currently on duty and Captain D'Angelo is scheduled for July.

Public Comments. Jeff Shaw, PTI, inquired about the status of his letter to the Board regarding the sharing of pilot Marine Safety Occurrence and Near Miss Reports with vessel owners and masters. Chairman Dudley stated he and Susan intend to look into the legal aspects of his request and will respond at their earliest opportunity.

Pilot applicant, David Grobschmit, inquired about the timeline of the appellants' appeals and also how a successful appellant might affect his position on the list of trainees awaiting training. At this time there are no answers, other than the legal process is unfolding and a pre-hearing conference is scheduled this month with the Administrative Law Judge.

Commissioner Comments. Commissioner Lee reported a safety violation that took place at Cherry Point recently involving a pilot and a trainee and the use of a cell phone in a restricted area. A letter with more detail will be sent to Puget Sound Pilots.

Chairman Dudley announced that in November he will have been with the Board for seven years. He invited anyone with concerns to contact him either privately or publicly if they believed this was perceived as a hindrance to the Board.

Confirmation of Next Regular Meeting Date. The next regular meeting is scheduled for July 13, 2006, at 9:30 a.m. in the Fourth Floor Rainier Conference Room, at 2901 Third Avenue, Seattle.

Review of Pilot Physical Examination Reports. After reviewing the physician's report it was moved by Commissioner C. Davis and seconded by Commissioner Addington that the annual physical examination report for Captain F.A. Coe be accepted for license renewal. The motion carried. It was moved by Commissioner Palmer and seconded by Commissioner Addington that Chairman Dudley be authorized to reinstate Captain A.L. Fosse's license upon satisfactory review and acceptance of his physician's report in order for him to return to duty prior to the next Board meeting. The motion carried. The Board is still awaiting follow-up information concerning Captain V. Engstrom.

The Chairman adjourned the regular session Board meeting at 1:10 p.m.

Respectfully submitted,

Peggy Larson, Administrator

Harry H. Dudley, Chairman

Charles M. Davis, Vice Chairman

Commissioner Oliver E. Mackey

Commissioner John S. Niederhauser

Commissioner Patrick M. Hannigan

Commissioner Vincent Addington

Commissioner Craig W. Lee

Commissioner Andrew C. Palmer

Commissioner Norman W. Davis