

## MEETING MINUTES

### STATE OF WASHINGTON ~ BOARD OF PILOTAGE COMMISSIONERS

June 12, 2008

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#### Present:

Chairman: Harry Dudley

Commissioners: Chuck Davis, Ole Mackey, Pat Hannigan, Bill Snyder, Vince Addington, Norm Davis

Assistant Attorney General: Susan Cruise

Administration: Peggy Larson and Judy Bell

Del Mackenzie, Mel Flavel, Walt Tabler (Administration): Puget Sound Pilots

Gary Nelson, Mary Nelson, Captain Stephen Cooke: Port of Grays Harbor/Grays Harbor Pilots

Mike Moore, Jordan Royer, Jeff Thompson: Pacific Merchant Shipping Association

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

Ron Kinsey: U.S. Coast Guard Sector Seattle

Larry Seymour: Pilot Applicant

Bruce Nelson: Pilot Trainee

Mary Ruth Mann: Attorney representing Bruce Nelson

Dan Brouillard, Dave Surface, Art Piehler, Saul Stashouer, James Brady, Dennis Miniken: Pilot Aspirants

#### 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 363-116-185: 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 an effective overall increase to the tariff of 2.5% or \$163 per pilotage job to be charged for pilotage services in the Grays Harbor Pilotage District for the 2008-2009 tariff year, as specified in the following tariff categories: Under the *Draft and Tonnage Fees Category* it is proposed that each charge in this category be increased by 1.8%. Under the *Harbor Shifts Category* it is proposed that the harbor shift fee be increased by 1.8%. Under the *Pension Charge Category* it is proposed that the charge per pilotage assignment, including cancellations, be increased \$23. Under the *Travel Allowance Category* it is proposed that the transportation fee per assignment be increased \$45. The filing was based on a written proposal dated May 8, 2008 submitted by Gary Nelson, Executive Director of the Port of Grays Harbor which details the request for rule amendments. It was also proposed that wherever the word "fee" appears in the tariff, it be replaced with the word "charge". The GHP 5-year Capital Spending Plan and 2007 year-end audited Financial Statement, previously submitted to the Board, were also considered in today's tariff determination. Oral testimony in support of the proposal was presented by Mary Nelson for the Port of Grays Harbor. A letter in support of the proposed tariff modifications dated May 23, 2008 was submitted by Captain Mike Moore on behalf of the Pacific Merchant Shipping Association. Written testimony dated June 4, 2008 was submitted by Captain Del Mackenzie with regard to the *Pension Charge Category*. Captain Mike Moore, Walt Tabler and retired Grays Harbor Pilot, Captain Ben Watson spoke of the history regarding pension issues. (10:20 a.m.)

Oral and written testimony was presented regarding the remaining twenty WAC sections listed below:

AMENDATORY SECTION	WAC 363-116-010	Time and place of meeting.
AMENDATORY SECTION	WAC 363-116-070	Collection of fees.
REPEALED SECTION	WAC 363-116-075	Qualifications for pilot applicants taking examinations before July 1, 2008.
AMENDATORY SECTION	WAC 363-116-0751	Qualifications for pilot applicants taking examinations on or after July 1, 2008.
AMENDATORY SECTION	WAC 363-116-076	Examination for pilot applicants.
AMENDATORY SECTION	WAC 363-116-077	Simulator evaluation for pilot applicants.
AMENDATORY SECTION	WAC 363-116-078	Training program.
AMENDATORY SECTION	WAC 363-116-082	Limitations on new pilots.
AMENDATORY SECTION	WAC 363-116-083	Written examination review and appeal procedures.

NEW SECTION	WAC 363-116-084	Simulator evaluation review and appeal procedures.
AMENDATORY SECTION	WAC 363-116-110	Details and requirements of annual license fee payment, physical examination report and reinstatement application.
AMENDATORY SECTION	WAC 363-116-120	Job description -- Physical examination -- Health requirements.
REPEALED SECTION	WAC 363-116-150	Registration of operators.
AMENDATORY SECTION	WAC 363-116-200	Duties of pilots.
AMENDATORY SECTION	WAC 363-116-205	Vessel certification.
AMENDATORY SECTION	WAC 363-116-315	Retirement disbursements.
AMENDATORY SECTION	WAC 363-116-35001	Exemption from provisions of WAC 197-10-800.
AMENDATORY SECTION	WAC 363-116-370	System of specified disciplinary or corrective actions.
AMENDATORY SECTION	WAC 363-116-405	Relieving pilots for cause.
AMENDATORY SECTION	WAC 363-116-420	Summary/temporary license suspension.

Oral testimony was presented by Gary Nelson, Captain Del Kelly, Susan Cruise, Captain Del Mackenzie, Walt Tabler, Captain Mike Moore, Captain Ben Watson and Captain Mike Gavin. Written testimony was received from Captain Matt Hannuksela, Captain Tom Webster, Captain Dan Brouillard, Captain William Lowery and Captain Del Mackenzie. Agency documents include those from Commissioner Hulsizer, the WAC Committee and Susan Cruise. In addition to some housekeeping matters the general focus of the testimony dealt with pilot examination qualifications, pilot examination appeal procedures and pilot pension issues.

The public hearing was closed by Chairman Dudley at 11:20 a.m.

### **REGULAR MEETING**

The regular meeting of the Board of Pilotage Commissioners was convened following a fifteen minute break.

#### **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 Addington and seconded by Commissioner Mackey that a CR-102 be filed for a public hearing in August to consider an amendment to or the repeal of the *Pension Charge* line item in WAC 363-116-185, and potentially create or amend other charges within this WAC section such that it would result in a revenue neutral tariff from what is adopted today. A motion to amend was made by Commissioner Hannigan and seconded by Commissioner C. Davis to include WAC sections 363-116-300 and 363-116-315. The motion carried. It was moved by Commissioner Hannigan and seconded by Commissioner Snyder to amend the motion on the table by adding that the proposed WAC language to be filed with the CR-102 be developed in consultation with a specialized assistant attorney general and a Board-appointed committee which includes public stakeholders. Following a five-minute break, Commissioner Hannigan stated he wished to withdraw his motion to amend. Commissioner Addington, with concurrence from Commissioner Mackey modified his original motion, once amended, to change August to October for the month of the public hearing. The amended motion carried. It was moved by Commissioner Hannigan and seconded by Commissioner Snyder that at the public hearing in October input would be provided to the Board by a specialized attorney hired through the Attorney General's Office concerning pensions and related issues. The motion carried.

Based on a verbal request made by Walt Tabler, it was moved by Commissioner Snyder that the Board waive its attorney/client privilege and share Susan Cruise's legal opinions and advice given to it regarding pilot pension issues. The motion failed for lack of a second. Walt Tabler will submit a written request to the Board.

It was moved by Commissioner Hannigan and seconded by Commissioner Mackey that the Board adopt the proposed 2008-2009 Grays Harbor Pilotage District tariff as filed with the Code Reviser and outlined in the tariff recommendation letter dated May 8, 2008 from the Port of Grays Harbor. The motion carried. The effective period of the new tariff will be from 0001 hours on August 1, 2008 through 2400 hours on July 31, 2009. All written materials and more detailed records of testimony, discussion and motions are contained in the rule-making file.

<b>WAC 363-116-010</b>	<b>WAC 363-116-077</b>	<b>WAC 363-116-110</b>	<b>WAC 363-116-315</b>
<b>WAC 363-116-070</b>	<b>WAC 363-116-078</b>	<b>WAC 363-116-120</b>	<b>WAC 363-116-35001</b>
<b>WAC 363-116-075</b>	<b>WAC 363-116-082</b>	<b>WAC 363-116-150</b>	<b>WAC 363-116-370</b>
<b>WAC 363-116-0751</b>	<b>WAC 363-116-083</b>	<b>WAC 363-116-200</b>	<b>WAC 363-116-405</b>
<b>WAC 363-116-076</b>	<b>WAC 363-116-084</b>	<b>WAC 363-116-205</b>	<b>WAC 363-116-420</b>

Each of the above sections was considered for final adoption. All sections were either amended as filed or as modified except sections 363-116-075 and 363-116-150 which were repealed, section 363-116-315 which remained unchanged and section 363-116-084 which is a new section. Some modifications were adopted that differed from the proposed language. All written materials and more detailed records of testimony, discussion and motions are contained in the rule-making file. It was moved by Commissioner Hannigan and seconded by Commissioner C. Davis that all modifications be accepted and all WAC sections be adopted as agreed upon with the exception of WAC 363-116-083. The motion carried. After further review of WAC 363-116-083 it was moved by Commissioner Snyder and seconded by Commissioner Hannigan that all modifications be adopted as agreed upon. The motion carried.

**Minutes.** There being no corrections or additions, the May 8, 2008 Minutes stand approved as written.

### **OLD BUSINESS**

**Consideration of Licensure of PSPD Trainee: Captain Bruce Nelson.** Ms. Mary Ruth Mann, attorney for Captain Bruce Nelson spoke to the Board regarding their public records request and what their expectations are for moving forward. It was moved by Commissioner C. Davis and seconded by Commissioner Snyder that the Board give written notice to twelve trainees and the relevant evaluators that within 21 days from the date of notice, unredacted copies of the training evaluation reports and spreadsheet summaries will be released unless one chooses to request an injunction in Superior Court. A signed confidentiality agreement will be included with the notice. The motion carried. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that the two attorneys will develop the confidentiality agreement. The motion carried. It was moved by Commissioner C. Davis and seconded by Commissioner Addington that the Board give written notice to the TEC members and the Board that within 21 days from the date of notice, unredacted copies of all e-mails will be released unless one chooses to request an injunction in Superior Court. A signed confidentiality agreement will be included with the notice. The motion failed with a vote of two in favor, four opposed and one abstention. There was continued discussion regarding the scope of the records request. The TEC offered to meet with Ms. Mann and Captain Nelson at its earliest convenience to discuss his training program. It was moved by Commissioner N. Davis and seconded by Commissioner Mackey to wait until after the TEC meeting (with Ms. Mann and Captain Nelson) to determine any modifications to the scope of the records request. The motion carried.

**Consideration of Proposed Letter Regarding Pilot Retirement Plans.** It was moved by Commissioner C. Davis and seconded by Commissioner Addington that this item be tabled. The motion carried.

### **NEW BUSINESS**

**Approval of Pilot Training Programs for Captain Stephen Jones & Captain Lawrence Seymour.** The TEC met with Captains Stephen Jones and Lawrence Seymour in order to develop their custom training programs for consideration by the Board. It was moved by Commissioner Snyder and seconded by Commissioner Mackey that the Board approve the two training programs as drafted by the TEC. The motion carried. Captains Jones and Seymour have fifteen days to respond to the Board concerning the acceptance of their training programs.

**Request for Approval of an Additional Operator: VICTORIA CLIPPER.** Clipper Navigation has requested Board approval to add and remove a vessel master for the operation of the *VICTORIA CLIPPER*. It was moved by Commissioner Mackey and seconded by Commissioner Addington that Captain Ronald Hinrichs be added to the list of Board-approved vessel operators for the *VICTORIA CLIPPER* and that Captain William Marschner be removed from the list. The motion carried.

**Consideration of Setting a Pilot Examination Date for the Puget Sound Pilotage District.** As required under the contract, COMIRA has submitted the Practice Analysis Survey for completion by the Puget Sound Pilots to be used as the fundamental assessment of knowledge for the 2008 Pilot Examination. After reviewing the document, it was moved by Commissioner Hannigan and seconded by Commissioner N. Davis that it be approved. The motion carried. It was moved by Commissioner Hannigan and seconded by Commissioner Mackey that the 2008 Pilot Examination for the Puget Sound Pilotage District be held during the week of October 20, 2008. The motion carried. A draft application packet was presented to the Board for review. Final application packets will be available by June 20, 2008 on the Board's web site or by contacting the Board Office. It was moved by Commissioner Mackey and seconded by Commissioner Hannigan that the pilot examination administration fee remain at \$400.

**Consideration of Request for Vessel Exemption: Motor Yacht SOLAIA.** A petition for vessel exemption was received regarding the foreign flagged 115', 427 gross ton Motor Yacht *SOLAIA*. 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 22, 2008, subject to final Board approval at today's meeting. It was moved by Commissioner Addington and seconded by Commissioner Hannigan that the Board concur with his action and issue the exemption for the *SOLAIA* for one year so long as it remains in the charge of Captain Michael Dailey. The motion carried.

**Consideration of Request for Vessel Exemption: Motor Yacht AGHASSI.** A petition for vessel exemption was received regarding the foreign flagged 145', 415 gross ton Motor Yacht *AGHASSI*. 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 June 2, 2008, subject to final Board approval at today's meeting. It was moved by Commissioner Addington and seconded by Commissioner Hannigan that the Board concur with his action and issue the exemption for the *AGHASSI* for one year so long as it remains in the charge of Captain Michael Judges. The motion carried.

**Consideration of Request for Vessel Exemption: Motor Yacht BOSSY BOOTS II.** A petition for vessel exemption was received regarding the foreign flagged 136', 398 gross ton Motor Yacht *BOSSY BOOTS II*. 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 27, 2008, subject to final Board approval at today's meeting. The exemption was conditioned upon the vessel taking a pilot on the inbound leg due to the Captain's lack of experience transiting locks. It was moved by Commissioner Addington and seconded by Commissioner Hannigan that the Board concur with his action and issue the exemption for the *BOSSY BOOTS II* for three months so long as it remains in the charge of Captain Mark Twin. The motion carried.

**Consideration of Request for Vessel Exemption: Motor Yacht KRISUJEN.** A petition for vessel exemption was received regarding the foreign flagged 123', 272 gross ton Motor Yacht *KRISUJEN*. 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 Mackey that the Board grant a three month exemption as requested, to the *KRISUJEN* so long as it remains in the charge of Captain Simon Davidson. The motion carried.

**Consideration of Request for Vessel Exemption: Sailing Yacht BELLA DONNA.** A petition for vessel exemption was received regarding the foreign flagged 21.3 meter, 66.36 gross ton Sailing Yacht *BELLA DONNA*. 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 Mackey that the Board grant a three month exemption as requested, to the *BELLA DONNA* so long as it remains in the charge of Captain John Smit. The motion carried.

**Consideration of Request for Renewal of Vessel Exemption: Motor Yacht PIANO BAR.** A petition for renewal of vessel exemption was received regarding the foreign flagged 121', 342 gross ton Motor Yacht *PIANO BAR*. 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 30, 2008, subject to final Board approval at today's meeting. It was moved by Commissioner Addington and seconded by Commissioner Hannigan that the Board concur with his action and grant a renewal of exemption for the *PIANO BAR* for one year so long as it remains in the charge of Captain Charles Johnson. 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 C. Davis and seconded by Commissioner Mackey that the Board grant a renewal of exemption for the *VANGO* for one year so long as the vessel remains in the charge of Captain David Hagerman. The motion carried.

**Pilot's Report of Marine Safety Occurrence: *ATB OCEAN RELIANCE*, 3-31-08.** The Board received a written report submitted by Puget Sound Pilot, Captain Jostein Kalvoy. After boarding the vessel in Vancouver B.C., bound for Cherry Point, the pilot learned that the vessel was not in ballast and had approximately 3000 tons of diesel on board. Since his state license does not permit him to pilot a loaded tanker he called his office to report the situation. Instructions were given to him to sail with the vessel until a senior pilot without license limitations could relieve him. Captain Kalvoy took the con from the Canadian pilot at the usual place during the transit and proceeded for about ten miles until he was met by Captain Chris Larson who piloted another two miles to the Cherry Point dock. It was moved by Commissioner Hannigan and seconded by Commissioner Mackey that Captain Kalvoy, while piloting this vessel, was acting solely on his federal license. The motion carried with a vote of four in favor and three opposed. 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.

**Pilot's Report of Marine Safety Occurrence: *HYUNDAI 203*, 5-3-08.** The Board received a written report submitted by Puget Sound Pilot, Captain Pat Hannigan. While departing the dock at Pier 7 in Tacoma the chief engineer reported a problem with the main engine exhaust manifold which was leaking exhaust gasses into the engine room. The ship was anchored in the general anchorage in Tacoma Harbor while repairs were made. While heaving anchor to get underway to Port Angeles the hydraulic piping related to the anchor windlass sprang a leak. This too was patched and then repaired while the vessel proceeded. The USCG was notified. It was moved by Commissioner Snyder and seconded by Commissioner C. Davis that this report of a navigational safety concern be filed as a Marine Safety Occurrence. The motion carried.

**Pilot's Report of Marine Safety Occurrence: *HENG SHAN HAI*, 5-28-08.** The Board received a written report submitted by Puget Sound Pilot, Captain Mel Flavel. While proceeding from Pier 86 in Seattle to Port Angeles on a loaded grain ship the master told the pilot they would have to stop for about an hour to repair a main engine high pressure oil pipe leak. The VTS was informed, a tug was dispatched and the vessel was anchored in Elliott Bay West without incident. It was moved by Commissioner Addington and seconded by Commissioner N. Davis that this report of a navigational safety concern be filed as a Marine Safety Occurrence. The motion carried.

**Pilot's Report of Marine Safety Occurrence: *PACIFIC PROVIDER*, 5-31-08.** The Board received a written report submitted by Puget Sound Pilot, Captain Eric Klapperich. While departing the berth at Stabbart Marine bound for Port Angeles the captain of the yacht informed the pilot that he would be at the con during the undocking and while transiting the locks. The captain had some difficulty during the departure from the berth and consequently made contact with the Motor Yacht *ICE BEAR* which was moored in the adjoining slip. It was moved by Commissioner Mackey and seconded by Commissioner C. Davis to defer Board action on this matter until more information is obtained. The motion carried. Clarification is needed as to whether this is a U.S. or a foreign flagged vessel and whether WAC 363-116-365: *Docking and Undocking of Certain Vessels by the Vessels' Masters* applies to this situation. Captain Mackenzie was asked to remind all pilots of WAC 363-116-365.

**Pilot's Report of Incident: *BLACK FOREST, 5-26-08.*** The Board received a written report submitted by Grays Harbor Pilot, Captain Stephen Cooke. While shifting from anchor to the Weyerhaeuser Bay City Dock in South Aberdeen the master reported during the weighing of the starboard anchor that it had become fouled with the chain. The vessel was re-anchored with the port anchor and later continued on its transit. The USCG was informed. The pilot's report included pictures of the condition of the starboard anchor connecting shackle. It was moved by Commissioner Mackey and seconded by Commissioner Snyder that this matter be declared an "Incident with damage and without pilot error". The motion carried.

**Puget Sound Pilots' Recommendations of Safe Practices Review Committee.** In a letter dated April 30, 2008 from Puget Sound Pilots, recommendations were made to the Board from PSP's *Safe Practices Review Committee*. They include: Have the Trainee Evaluation Committee develop a better communication system between the trainers and the trainees; Increase the training activity in the Duwamish and Hylebos Waterways; Require two orientation sessions for upgrading pilots at the end of year one and year five with specific emphasis on certain issues; Circulate Incident and MSO Reports to all pilots as a "lessons learned" tool after Board consideration of each report; and Develop new WAC language addressing protocol and expectations following a serious marine incident. It was determined that PSP, PGH and the USCG will each make specific written requests to the Board for copies of the Incident and Marine Safety Occurrence Reports. It was moved by Commissioner Hannigan and seconded by Commissioner N. Davis that a CR-102 be filed announcing rule-making intentions regarding proposed amendments to WAC 363-116-200: Duties of Pilots as drafted and included in the April 30<sup>th</sup> PSP letter. The motion carried. The TEC will undertake the first three recommendations.

**Activity Reports.** These reports will be heard next month.

#### **Committee Reports.**

##### **Trainee Evaluation Committee:**

- The TEC met on June 11<sup>th</sup>.
- The TEC reviewed the status of trainee Katharine Sweeney who is in her ninth month and second extension of pilot training ending June 30<sup>th</sup>. It was moved by Commissioner Snyder and seconded by Commissioner Mackey that Captain Sweeney's training program be extended for two additional months through August 31<sup>st</sup> and that the TEC be authorized to develop the training program addendum. The motion carried.

**2008 WAC Committee:** No report.

**2008 Pilot Exam Committee:** No report.

**Work Group Report: Extension of Route and Contract Pilotage.** No report.

**Miscellaneous Correspondence.** Captain John Arnold reported to the Board that he has been absent from the pilotage ground for more than 60 days without Board permission (WAC 363-116-200(6)) due in part to a delay in getting his federal license renewed. As soon as he receives it and submits a copy to the Board Office he will be authorized to return to work.

**Confirmation of Next Regular Meeting Date.** The next regular meeting scheduled for Thursday, July 10, 2008 was moved to Wednesday July 16, 2008 due to a quorum issue. The meeting will begin at 9:30 a.m. at 2901 Third Avenue, Seattle.

**An EXECUTIVE SESSION was called from 4:45 p.m. to 5:00 p.m. for purposes of discussing** potential litigation, trainee evaluations and pilot physical examination reports. In attendance were Chairman Dudley, Commissioners C. Davis, Mackey, Hannigan, Snyder, Addington and N. Davis; Susan Cruise, Peggy Larson and Judy Bell.

**Review of Pilot Physical Examination Reports.** After reviewing the physicians' reports it was moved by Commissioner C. Davis and seconded by Commissioner Snyder that the physical examination reports for Captains D.W. Grobschmit, G.D. Hurt, R.F. McCurdy and M.D. Wood 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 Jones be accepted for training licensure. The motion carried. A physician's letter states Captain M.D. Wood is fit for duty and able to resume piloting duties. It was moved by Commissioner C. Davis and seconded by Commissioner Snyder that Captain Wood be authorized to return to work and his license be returned to active status effective immediately. The motion carried. Follow-up information as requested was submitted on behalf of Captain M.R. Flavel. It was moved by Commissioner C. Davis and seconded by Commissioner Mackey that the follow-up information be accepted and Captain M.R. Flavel's physical examination report be accepted for annual license renewal. The motion carried.

There being no further business to come before the Board, the Chairman adjourned the regular session Board meeting at 5:10 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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Commissioner Oliver E. Mackey

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Commissioner Patrick M. Hannigan

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Commissioner William H. Snyder

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Commissioner Vincent Addington

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**Absent**  
Commissioner Craig W. Lee

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Commissioner Norman W. Davis

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**Absent**  
Commissioner Elsie J. Hulsizer